



## Mayor and Cabinet

### **Report title: Decision to expand Drumbeat School & ASD Service**

**Date:** 11 December 2019

**Key decision:** Yes

**Class:** Part 1

**Ward(s) affected:** Whole Borough

**Contributors:** Executive Director for Children and Young People

### **Outline and recommendations**

This report provides the results of the statutory period of representation conducted on the proposal to expand the permanent capacity of Drumbeat School & ASD Service from 171 places to 203 places with effect from January 2020. The report then goes on to seek a decision from the Mayor and Cabinet (as LA Statutory Decision Maker) to enable this expansion to take place.

The Mayor and Cabinet are recommended:

- to note the results of the period of representation conducted on the proposal to expand Drumbeat School & ASD Service.
- to agree that Drumbeat School & ASD Service be expanded from 171 places to 203 places with an implementation date of January 2020.

### **Timeline of engagement and decision-making**

4 October 2019

The statutory notice and proposal for the expansion of Drumbeat School & ASD Service were published in the South London Press and on the Lewisham website

4 October 2019 - 8 November 2019

Period of representation (Period of time when people can submit comments regarding the proposal)

12pm 8 November 2019

Deadline for comments on proposal

## 1. Summary

- 1.1 The report feeds back on the representation period and seeks a decision from the Mayor and Cabinet regarding the proposed expansion of Drumbeat School & ASD Service. The proposed expansion will allow the school to cater for 203 students (up from 171) by January 2020

## 2. Recommendations

- 2.1 The Mayor and Cabinet are recommended:
- 2.2 to note the results of the period of representation conducted on the proposal to expand Drumbeat School & ASD Service.
- 2.3 to agree that Drumbeat School & ASD Service be expanded from 171 places to 203 places with an implementation date of January 2020

## 3. Policy Context

- 3.1 The proposal to expand Drumbeat School & ASD Service will contribute to the following key priority outcome of Lewisham's Corporate Strategy 2018-2022:
- 3.2 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.
- 3.3 And specifically helps deliver against the commitment to increase the provision for children with special educational needs to meet children's learning need within the borough.
- 3.4 The Local Authority has a duty to ensure the provision of sufficient places for pupils of statutory school age

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

- 3.5 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.
- 3.6 Within the new 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.
- 3.7 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***

- 3.8 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
- 3) Decision making
- 4) Implementation

3.9 In the case of a community school (which Drumbeat School & ASD Service 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.

## **4. Background**

4.1 The council conducted a SEND review in summer 2016. This review confirmed the growing SEND population within the Borough and highlighted four key areas around place planning which should be further explored regarding existing provision;

- An Autistic Spectrum Disorder (ASD) review, both regarding the high instance rate, and also how young people with ASD needs are catered for across the whole Mainstream and Specialist provision
- Additional Severe Learning Difficulties (SLD) places, to cater for the increased in number of children and reduce the need to place out of Borough
- A widened Social, Emotional and Mental Health (SEMH) provision, to address the lack of provision in KS4
- Moving the Primary PRU out of the current New Woodlands SEMH setting, to ensure that both cohorts are accommodated in suitable environments fit for their requisite needs

4.2 Following this review, further analysis of ASD need and provision has been conducted by the Children with Complex Needs (CWCN) service to better understand what exactly the place requirement is, but also how best to meet it. In completing this analysis, the CWCN service have considered how the system currently works, what best practice looks like, where young people are currently being placed and how the rise in young people with SEND relates to population growth.

4.3 Specifically in relation to this proposal, the analysis identified the need for an immediate increase of ASD places. Thus far, Drumbeat School have been able to go over number by 10% as allowable by the statutory guidance, and so currently caters for 187 pupils. However for the school to increase its numbers further this statutory consultation process must take place.

4.4 The need for a number of these places already exists, as can be shown by the pressure to commission additional ASD places outside of Lewisham as Drumbeat School is currently full (in terms of how many children it can cater for before requiring an 'expansion' decision) and therefore in effect oversubscribed. These commissioned places outside of the Borough, are often in expensive, and distant, independent provision, which on average cost £44k compared to £28k at Drumbeat.

4.5 The proposal means that over time the school will cater for a cohort that has increased by 32 students from its current published capacity – noting that the school already caters for 16 above the current capacity. It is expected that the additional 16 spaces will be filled this academic year.

4.6 To achieve this expansion, the Council will be utilising spare space within the school which will be re-purposed to provide appropriate teaching accommodation. Officers have worked with the school to ensure that this approach will not have a negative

impact on existing teaching and learning space, and that the new total number of students can be accommodated appropriately.

- 4.7 The objective of the proposal is to utilise additional capacity within the school buildings to accommodate the increase in demand for ASD provision within the borough and reduce the need to commission out of borough placements, as placing young people in provision that is further afield does not benefit the young person in terms of social inclusion or a sense of community. There is often an extensive amount of travel time (often in isolation) which is disadvantageous also. The ability to cater for our young people and their families close to home will allow the wider range of support systems to function in the best interests of those young people and their families.
- 4.8 The proposal would build on the good (with outstanding features) Ofsted rated standards for teaching and learning already in place at the school and provide additional places without having any negative impact on other schools, academies and educational institutions in the area. The proposal would also have a positive impact on travel distance/time for some students.

#### **Implementation of the proposal**

- 4.9 The additional places proposed would enable the school to grow to admit up to 203 pupils in total. This may not occur on the date of first expansion. It is not possible to be more specific as each year group is a different size, dictated by need.

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

- 4.10 It is not anticipated that the proposed expansion of Drumbeat School will have any impact on other educational facilities within the local area. The proposal has been made to accommodate the increase in pupil numbers that is being experienced within the Borough and to reduce the reliance on out of borough provision.

### **5. Publication & Representation**

- 5.1 The statutory notice and proposal for the expansion of Drumbeat School & ASD Service were published on 4 October 2019, with the representation period running for 5 weeks until 8 November 2019.
- 5.2 As well as being published in the local press and on the Lewisham website, the proposal was distributed to all parents, carers and staff at Drumbeat School & ASD Service.
- 5.2 During that period the council received a single response (see Appendix 1) which was supportive of the proposal and the rationale behind it.
- 5.3 Officers have completed the statutory process fully and believe that a lack of further responses suggest that stakeholders do not regard the expansion as a negative proposition.
- 5.5 As such, officers recommend that the Mayor and Cabinet agree to the expansion of Drumbeat School & ASD Service from 171 to 203 places, with an implementation date of January 2020.

### **6. 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:

### 6.1 **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). All views submitted (of which there was only one) including all support for, objections to and comments on the proposals have been reported to the decision maker in Appendix 1.*

### 6.2 **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 expansion 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.*

### 6.3 **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.*

### 6.4 **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 places for pupils with a diagnosis of ASD, ensuring that more pupils can attend school closer to home rather than having to attend provision outside of the borough.*

### 6.5 **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 will enable more students to access specialist provision more locally, reducing the need for travel to out of borough provision, and as such actually has a positive impact on travel and accessibility.*

## 6.6 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 capital funding is required to implement the proposal*

- 6.7 The Mayor and Cabinet are recommended to agree the proposal to expand Drumbeat School and ASD service from 171 to 203 places from January 2020

## 7. Financial implications

### Capital Financial Implications

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

### Revenue Financial Implications

- 7.2 There are no financial implications for the General Fund. The revenue income and expenditure for these additional places forms part of the High Needs Block within the Dedicated Schools Grant funding.
- 7.3 Lewisham is currently undertaking a review of services supported by the High Needs Block. We are currently anticipating the High Needs Block to be within budget for 2019/20 and 2020/21. However, due to a combination of demand, severity of need, available provision etc, there is a forecasted overspend position in future years.
- 7.4 The budget position has been discussed in detail with Schools Forum. A working group has been established to consider and progress a mitigation plan.
- 7.5 One key feature of the mitigation plan is developing in house provision. It is anticipated that the extra provision will result in a net saving of approximately £25k per place.
- 7.6 Initially as the numbers progress there may be a short term pressure.

## **8. Legal implications**

- 8.1 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.
- 8.2 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.
- 8.3 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.
- 8.4 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.

- 8.5 The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 provide that an expansion of a maintained Special School is a prescribed alteration 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 expand a Special School will be determined by the local authority as decision maker.
- 8.6 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.
- 8.7 Any decision to expand Drumbeat School & ASD Service 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.
- 8.8 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**

- 8.9 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.
- 8.10 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.

8.11 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.

8.12 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.

8.13 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)

8.14 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

8.15 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)

## **9. Equalities implications**

9.1 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.

9.2 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.

9.3 Specifically this report seeks to expend the SEN provision within the borough to ensure that we are best delivering for the current cohort of young people within the borough, and therefore ensures that we are taking due regard for their needs.

## 10. Climate change and environmental implications

10.1 The reduction in students travelling long distances to appropriate provision, and a lesser reliance on transport will have a positive benefit regarding emissions and helping tackle the climate emergency.

## 11. Crime and disorder implications

11.1 There are no crime and disorder implications.

## 12. Health and wellbeing implications

12.1 The provision of additional ASD school places within Lewisham will have a positive impact on the health and wellbeing of students and their families. Reducing the amount of travel that have to ensure, and also ensuring that they are education closer to home and their home communities.

## 13. Appendices

13.1 **Appendix 1** – Expansion of Drumbeat School & ASD Service – Anonymised Representation responses.

13.2 **Appendix 2** – Copy of Proposal to expand Drumbeat School & ASD Service

13.3 **Appendix 3** – Copy of Statutory Notice to expand Drumbeat School & ASD Service

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

## 14. Glossary

Term	Definition
ASD	Autism Spectrum Disorder
Representation	Period in which people can make comments. Like consultation

## 15. Report author and contact

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