



Mayor and Cabinet

Report title: Change of Age Range at Fairlawn Primary School – Decision Report

Date: 6 July 2022

Key decision: Yes

Class: Part 1

Ward(s) affected: Forest Hill, Crofton Park, Perry Vale

Outline and recommendations

This report provides the results of the statutory period of representation conducted on the proposal to change the age range of Fairlawn Primary School from 4-11 years old to 3-11 years old from September 2022 to enable the permanent addition of a nursery class. 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 change the age range of Fairlawn Primary School.
- to agree to the proposal that the age range at Fairlawn Primary School changes from 4-11 years old to 3-11 years old from September 2022.

Timeline of engagement and decision-making

13 May 2022

The statutory notice and proposal for the change of age range at Fairlawn Primary School were published in the South London Press and on the Lewisham website

13 May 2022 – 17 June 2022

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

12pm 17 June 2022

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 change of age range at Fairlawn Primary School, with an implementation date of September 2022. The proposed change will enable the permanent addition of a nursery class that has been open on a trial basis for the past 2 years.

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 change the age range of Fairlawn Primary School
- 2.3 to agree to the proposal that the age range at Fairlawn Primary School changes from 4-11 years old to 3-11 years old from September 2022.

3. Policy Context

- 3.1 The proposal to change the age range of Fairlawn Primary School will contribute to the following key priority outcomes 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.

Place Planning Strategy 2017-22

- 3.3 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.
- 3.4 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.

School Organisation Requirements

- 3.8 Proposals to change the age range of 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 Fairlawn Primary School 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 school took a decision to open a nursery class from September 2020 on a trial basis following consultation with prospective parents and a business case approved by the Governing Body.
- 4.2 In the following two years, the nursery has proven to be a success and provides 26 places to the local community, and has been proven to be both financially viable and helping to boost early year's education in the local area. Those 26 places consist of 16 '30 hour' places and 10 morning and 10 afternoon places. As of May 2022 the current signed up intake for September 2022 is for 16 '30 hour' places, 8 morning places and 7 afternoon places.
- 4.3 Following this trial period, the school now wish to permanently change the age range to accommodate the nursery provision long-term. The cohort size of the school will not increase, and no construction/expansion works are necessary to accommodate this permanent change.

Implementation of the proposal

- 4.10 The school has been running a nursery class since 2020 on a trial basis utilising spare capacity on site resulting from a reduction in the number of statutory school aged primary school pupils in the borough.
- 4.11 The change of age range therefore makes this addition of a nursery class a permanent change, and the statutory consultation is necessary in order for this to continue in line with guidance.
- 4.12 No changes need to be made to the school to accommodate this change.

Effect on other educational institutions in the area

- 4.13 The proposal would not have any negative impact on other schools, academies and educational institutions in the area, particularly as this is the continuation of a 2 year trial. The proposal would also have a positive impact on travel distance/time for the majority of pupils, as they would be able to attend a more local nursery provision.

5. Publication & Representation

- 5.1 The statutory notice and proposal for the change of age range of Fairlawn Primary School were published on 13 May 2022, with the representation period running for 5 weeks until 17 June 2022.
- 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 the school.
- 5.3 A public consultation meeting was held virtually on Monday 23 May for interested parties to attend, to discuss the proposals and pose further questions.
- 5.4 During the period of representation the council received 2 responses (see Appendix 1), one of which was supportive and one against the proposal. The response that was supportive clearly showed that local parents are seeking this provision to be made permanent, and as such the proposal support parental preference. The response

against the proposal fears that the permanent addition of a nursery class would hasten the closure of a nearby school in Southwark that is currently running a closure consultation. Officers don't believe that this fear is justified, and indeed Fairlawn Primary School themselves have reduced roll numbers over the past few years by not recycling bulge classes to play their wider part within the local system dealing with reduced pupil numbers overall. It should also be noted that the proposed change of age range which would permit a permanent re-opening of the nursery, has been tested over the last 2 years, and is clearly wanted by local parents. Additionally this year we have seen 4 school nurseries considering a temporary closure, and officers believe that with the continued vulnerabilities in the sector we need to retain as much maintained provision as possible, especially as we have no control over the commercial nursery sector (including private and voluntary institutions as well as childminders) only an influencing partnership.

- 5.5 Officers have completed the statutory process fully and have considered the representations made and recommend that the Mayor and Cabinet agree to the change of age range of Fairlawn Primary School from 4-11 years old to 3-11 years old with an implementation date of September 2022.

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 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 popular nursery education is available in a School that is rated by Ofsted as good with outstanding features.

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 widen the choice for parents in the local area.

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 a continued increase in nursery places, ensuring greater parental choice.

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 children to access more local nursery provision, and as such should actually have 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 funding is needed to enable the implementation of this proposal.

- 6.7 The Mayor and Cabinet are recommended to agree the proposal to change the age range of Fairlawn Primary School from 4-11 year olds to 3-11 year olds with an implementation date of September 2022

7. **Financial implications**

Capital Financial Implications

- 7.1 There are no capital implications associated with this proposal.

Revenue Financial Implications

- 7.2 The report proposes change of age range at Fairlawn Primary School, with an implementation date of September 2022. The proposed change will enable the permanent addition of a nursery class that has been open on a trial basis for the past 2 years.
- 7.3 Nursery school funding is met from within the Dedicated Schools Grant –Early Years Block. The Early Years Block receives funding from the DfE based on pupil number take up. This funding would then be considered by the schools alongside other funding to provide a whole school approach.
- 7.4 There should be no direct financial implications for the General Fund.

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 a change of age range of a maintained school (including the addition of a nursery) 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 change the age range of a maintained 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 change the age range of Fairlawn Primary 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.

- 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 8.10 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
- 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

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 Specifically this report seeks to add a school nursery provision within the borough to help ensure that we are best delivering for the current cohort of Lewisham young people, and therefore ensures that we are taking due regard for their needs.

10. Climate change and environmental implications

- 10.1 The potential reduction in distance travelled by children to appropriate provision should 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 additional school nursery will have a positive impact on the health and wellbeing of students and their families. Reducing the amount of travel and ensuring that they are educated closer to home and their home communities.

13. Appendices

- 13.1 **Appendix 1** – Change of Age Range of Fairlawn Primary School – Anonymised Representation responses.
- 13.2 **Appendix 2** – Copy of Proposal to change the age range of Fairlawn Primary School
- 13.3 **Appendix 3** – Copy of Statutory Notice to change the age range of Fairlawn Primary School
- 13.4 **Appendix 4** – Statutory Guidance for Decision Makers

14. Glossary

Term	Definition
Representation	Period in which people can make comments. Like consultation

15. Report author and contact

- 15.1 Matt Henaughan, Head of Business, Infrastructure and Education Operations
Matt.Henaughan@lewisham.gov.uk 0208 314 3321

16. Comments for and on behalf of the Director of Finance

- 16.1 Mala Dadlani, Malasona.Dadlani@lewisham.gov.uk

17. Comments for and on behalf of the Director of Law and Corporate Governance

- 17.1 Sohagi Patel, Sohagi.patel@lewisham.gov.uk Commercial Education and Employment Lawyer, 0208 314 7368