



## Mayor and Cabinet

### **Report title: Change in designation of the Rushey Green Primary School SEN Provision – Decision Report**

**Date:** 7 December 2022

**Key decision:** Yes

**Class:** Part 1

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

### **Outline and recommendations**

This report provides the results of the statutory period of representation conducted on the proposed change in designation of the SEN provision at Rushey Green Primary School from a Centre for the Deaf (CfD) to a provision catering for pupils with a primary diagnosis of Social, Emotional and Mental Health needs (SEMH), with an implementation date of January 2023. The report then goes on to seek a decision from the Mayor and Cabinet (as LA Statutory Decision Maker) to enable this change of designation of a SEN provision 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 designation of the SEN provision at Rushey Green Primary School.
- to agree to the proposal to change the designation of the SEN provision at Rushey Green Primary School from a Centre for the Deaf (CfD) to a provision catering for pupils with a primary diagnosis of Social, Emotional and Mental Health needs (SEMH) with an implementation date of January 2023.

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

7 October 2022

The statutory notice and proposal for the change in designation of the SEN provision at Rushey Green Primary School were published in the South London Press and on the Lewisham website

7 October 2022 – 12 November 2022

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

12pm 12 November 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 in designation of the SEN provision at Rushey Green Primary School from a Centre for the Deaf (CfD) to a provision catering for pupils with a primary diagnosis of Social, Emotional and Mental Health (SEMH), with an implementation date of January 2023.

## **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 designation of the SEN provision at Rushey Green Primary School.
- 2.3 to agree to the proposal to change the designation of the SEN provision at Rushey Green Primary School from a Centre for the Deaf (CfD) to a provision catering for pupils with a primary diagnosis of Social, Emotional and Mental Health needs (SEMH) with an implementation date of January 2023.

## **3. Policy Context**

- 3.1 The proposal to change the designation of the SEN provision at Rushey Green 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.
- 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 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 designation of a 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 Rushey Green 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 In 2019, Lewisham Council started the coproduction and consultation process for the Local Area SEND Strategy which was due to be launched in 2020. From the consultation a number of areas were highlighted as gaps in current provision across the Council. One of these was around sufficiency and place planning. Therefore, as part of the SEND Strategy there is a work stream on Sufficiency, and Place Planning. To ensure that the plan reflected the current picture of gaps in provision a number of data exercises were carried out.

4.2 The data continues to show an increasing demand for specialist provision for children and young people with SEMH. Currently there are 363 EHC plans where SEMH has been identified as the primary area of need. This is over 10% of the number of EHC plans that are issued by Lewisham.

4.3 Rushey Green Primary School has an established Centre for the Deaf resource base which is currently commissioned for 6 pupils. Over the last few years there have been a smaller number of children accessing the Centres for the Deaf across both Rushey Green and Coopers Lane. Currently there are only 3 pupils using the resource base at Rushey Green and similar numbers at Coopers Lane.

4.4 Nationally due to the success and progression in technology, cochlear implants, and parents choosing inclusive mainstream education, the number of children that require specialist provision via a Centre for the Deaf is falling and this is replicated within Lewisham.

4.5 Individuals that are currently within the Resource Base will have individual consultations as to whether they wish to stay within the school or move to Cooper's Lane Centre of the Deaf. However, the school are happy for those individuals to stay at the school and are committed to continuing to meet their needs.

4.6 The rationale for this change has come from analysis of our data and the recognition that there is a changing need for specialist support of children with SEND, and is part of a wider piece of work that has seen additional resource bases being provided across the borough, in addition to expansions of our Special Schools.

4.7 The objective of the proposal is to ensure sufficiency of places offering the right level of support to students with a primary need of SEMH within the Borough.

4.8 This proposal forms part of Lewisham Council's response to the statutory obligation to provide sufficient school places.

## **Implementation of the proposal**

- 4.9 The change in designation of the resource base will allow the school to cater up to 6 pupils with SEMH over time, as well as continuing to cater for those pupils currently within the Centre for the Deaf should their parents choose for them to stay.
- 4.10 The change in provision will not require any changes to the fabric of the school and do not require any capital works.

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

- 4.11 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 changing needs of pupils with SEND within the borough that require additional support.

## **5. Publication & Representation**

- 5.1 The statutory notice and proposal for the change in designation of the SEN provision at Rushey Green Primary School were published on 7 October 2022, with the representation period running for 5 weeks until 12 November 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 at Rushey Green Primary School on Thursday 3 November for interested parties to attend, to discuss the proposals and pose further questions.
- 5.4 Those families of the children currently receiving support via the Centre for the Deaf have also been met with by the school, with council support
- 5.5 Although we are aware of a petition against the change in designation signed by 429 people (<https://www.change.org/centreofthedeafatRG>), however during the period of representation there were only 4 responses received, and these are outlined in Appendix 4. It is believed that none of the petition signatories are associated with Rushey Green Primary School, and those that have left comments on the petition are championing the needs of children with SEND generally, rather than specifically about the provision within the Centre for the Deaf.
- 5.6 The public consultation meeting had 5 attendees who raised concerns about current provision and also wanted re-assurance as to the necessary support being given to existing pupils at the school moving forwards, regardless of the decision on the proposal.
- 5.7 Within the 4 responses received, 3 are against the proposal and 1 (from the National Deaf Children's Society - NDCS) outline how we can work together to ensure current pupils needs are met.
- 5.8 The responses that are against the proposal mainly outline concern as to the current provision and as a result whether the school is capable of offering a different kind of SEN provision. They also seek the continued delivery of provision for the existing pupils at Rushey Green.
- 5.9 Officers recognise that any change in provision can be a worrying and stressful time for children and their parents. We have been working with the school to ensure that

parents understand their options should this change in designation be agreed. The school is committed to continuing to meet the needs of the children as prescribed in their Education, Health and Care Plans (EHCP), and officers have committed to have these reviewed again to ensure that they are effectively meeting the needs of the children. Alternatively parents could ask the SEN Team to consult for a place for their child in the Centre for the Deaf at Coopers Lane Primary School. It should be noted that at this time, all the parents wish for their children to remain at Rushey Green.

- 5.10 Officers are also engaging with the NDCS regarding how best to ensure needs are met and are taking on the recommendations outlined by them (highlighted in their response to the consultation in Appendix 4).
- 5.11 Regarding concerns that have been voiced about the schools capability to operate a differently designated resource base, officers believe that the school has the skills and expertise to do this alongside support from the LA, which will be provided via initial and ongoing training and expert support.
- 5.12 Officers have completed the statutory process fully and believe that the concerns raised can be effectively mitigated against. The proposal to change the designation of the SEN provision at Rushey Green Primary School will increase the number of young people with SEND that we can provide for within Lewisham and as such better meets the needs of a wider cohort of our children and young people.
- 5.13 As such, officers recommend that the Mayor and Cabinet agree to the change in designation of the SEN provision at Rushey Green Primary School, from a Centre for the Deaf to a provision catering for pupils with a primary need of SEMH, with an implementation date of January 2023.

## **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 1 & 2). The views submitted are contained within appendix 4, and have been responded to above in section 5.*

### **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 change in designation of the SEN provision 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 SEMH needs.*

### **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. The parents of the children currently in the Centre for the Deaf have indicated a preference to stay at the school and officers will see to conduct EHCP reviews of these children to ensure that any perceived adverse impact of the closure of the provision is mitigated against and pupils receive the support that they require. There will of course also be wider benefits of a new provision, not least to the children and their families that will be served by it.*

#### 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 SEMH, 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. Additionally the parents of pupils currently within the Rushey Green CfD have indicated a desire for their children to remain at Rushey Green. As such the proposal 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 additional funding is required to implement this proposal.*

- 6.7 The Mayor and Cabinet are recommended to agree to the proposal to change the designation of the SEN provision at Rushey Green Primary School, from a Centre for the Deaf to a provision catering for pupils with a primary need of SEMH, with an implementation date of January 2023

## 7. Financial implications

### Capital Financial Implications

- 7.1 There are no capital financial implications.

### Revenue Financial Implications

- 7.2 The report supports the change in designation of the SEN Provision at Rushey Green Primary School from CfD to SEMH, with an implementation date of January 2023
- 7.3 In line with all Local Authorities, SEN need is currently outstripping the provision available especially within Lewisham. This recommendation will support the High Needs Mitigation plan which is working towards more in borough provision supporting our specific needs types. The change could potentially provide an in year saving of circa £100k to the DSG high needs block.
- 7.4 The change in designation of the resource base is part of a mitigation plan being progressed with Schools Forum and Schools to meet demand and reduce costs especially those associated with high cost out of borough placements (OOB) – this is further outlined in the table below

	Centre for Deaf- Sept 2022	SEMH
Provision	6	6
Potential numbers	3	6
Rushey green	£12,150 top up	£12, 150 top-up
Cost of OOB	N/A	£39.5k average
Rushey green	3x £12,150 + 6x£10k = £96,450	6x£12,150+6x£10k =£132,900
OOB	N/A	£237,000
Associated transport cost	N/A	Yes
Net favourable variance		£104,100

- 7.5 There are no direct financial implications for the General Fund. However, transport is funded from the General Fund, it is anticipated that should a pupil placed at this provision with transport associated costs, the position would be more favourable than an out borough placement
- 7.6 The revenue income and expenditure for these additional places forms part of the High Needs Block within the Dedicated Schools Grant funding. As previously stated, this provision should support Lewisham's strategy towards reducing costs

## **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 in designation of a SEN provision at a maintained 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 for the change in designation of a SEN provision at a maintained school will be determined by the local authority as decision maker.
- 8.6 The relevant statutory guidance advises that the 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 designation of the SEN provision at Rushey Green Primary School should be taken in the light of the representations received to the statutory consultation at Appendix 4 and the DfE Guidance for Decision-Makers attached at Appendix 3.
- 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. In accordance with the Council's Constitution, decisions relating to alteration of schools and in relation to the publication of any notice in relation to schools are to be made by Mayor & Cabinet.

This is a key decision due to the change in designation the SEN provision at Rushey Green Primary School being a significant change to the character of the school.

### **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](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 Specifically this report seeks to alter the SEN provision within the borough to ensure that we are best delivering for the current cohort of young people in Lewisham, 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 change in designation of the SEN provision from a CfD to SEMH will provide additional school places for children with SEMH within Lewisham will have a positive impact on the health and wellbeing of children and their families. Reducing the amount of travel that they have to endure, and also ensuring that they are educated closer to home and their home communities. Those children that are currently receiving support in the CfD will continue to receive the same levels of specialist support either at Rushey Green Primary School or within the CfD at Coopers Lane Primary School should they prefer.

## 13. Appendices

- 13.1 **Appendix 1** – Copy of Proposal to change the designation of the SEN Provision at Rushey Green Primary School
- 13.2 **Appendix 2** – Copy of Statutory Notice to change the designation of the SEN provision at Rushey Green Primary School
- 13.3 **Appendix 3** – Statutory Guidance for Decision Makers
- 13.4 **Appendix 4** – Anonymised consultation responses

## 14. Glossary

Term	Definition
CfD	Centre for the Deaf
SEMH	Social, Emotional and Mental Health
Representation	Period in which people can make comments. Like consultation

## 15. Report author and contact

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

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

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