

MAYOR AND CABINET			
Report Title	Measures to increase the supply of permanent primary school places: Report to defer the enlargement of Sir Francis Drake Primary School to September 2017		
Key Decision	Yes	Item No.	
Ward	Evelyn		
Contributors	Executive Director for Children and Young People, Executive Director Regeneration & Resources, Head of Law		
Class	Part 1	Date:	July 15 2015

1. Summary

This report updates the Mayor on progress by the Education Funding Agency (EFA) in their proposals to enlarge Sir Francis Drake Primary School (SFD) from 1 to 2 Forms of Entry, and the impact that will have on the Local Authority's proposals to meet the demand for places across the borough.

2. Purpose

2.1 This report requests that the Mayor defer the enlargement of Sir Francis Drake Primary School for a further academic year to September 2017, and reinstate the Determined Admissions Limit for 2016/17 to the current intake of 30 pupils.

3. Recommendations

The Mayor is recommended to:

- 3.1 modify the decision made on the 25 June 2014 to enlarge Sir Francis Drake Primary School from 1 to 2 forms of entry with effect from September 2016, subject to the development of satisfactory building proposals in partnership with the Education Funding Agency;
- 3.2 defer the enlargement of Sir Francis Drake Primary School from 1 to 2 forms of entry for a further academic year to September 2017, subject to the development of satisfactory building proposals in partnership with the Education Funding Agency;
- 3.3 agree to the referral to the Schools Adjudicator seeking a reduction to the Published Admission Number for 2016/17 in relation to Sir Francis Drake School ;
- 3.4 retain funding already agreed to support additional planning requirements as a commitment from the school places expansion programme.

4. Policy Context

- 4.1 The proposals within this report are consistent with ‘*Shaping Our Future: Lewisham’s Sustainable Community Strategy*’ and the Council’s corporate priorities. In particular, they relate to the Council’s priorities regarding *young people’s achievement and involvement*, including *inspiring and supporting young people to achieve their potential*, the *protection of children and young people* and *ensuring efficiency, effectiveness and equity in the delivery of excellent services to meet the needs of the community*.
- 4.2 The Local Authority has a duty to ensure the provision of sufficient places for pupils of statutory school age and, within financial constraints, accommodation that is both suitable and in good condition.
- 4.3 In aiming to improve on the provision of facilities for primary education in Lewisham which are appropriate for the 21st century, the implementation of a successful primary places strategy will contribute to the delivery of the corporate priority *Young people’s achievement and involvement: raising educational attainment and improving facilities for young people through partnership working*.
- 4.4 It supports the delivery of Lewisham’s *Children & Young People’s Plan* (CYPP), which sets out the Council’s vision for improving outcomes for all children and young people, and in so doing reducing the achievement gap between our most disadvantaged pupils and their peers. It also articulates the objective of improving outcomes for children with identified SEN and disabilities by ensuring that their needs are met.

The Primary Capital Programme (PCP) and Lewisham’s Primary Strategy for Change

- 4.5 A priority in the Primary Strategy for Change (PSfC), is the provision of sufficient places at the right time to meet future needs within and between Primary Places Planning Localities (PPPLs) in the Borough. As stated in Lewisham’s June 2008 PSfC:
- “Ensuring that sufficient places are provided in localities at the right time will take precedence over significant investment in schools where the rectification of conditions and suitability issues will not produce additional places.”*
- 4.6 Dependent upon future central government decisions on capital delivery, it is proposed that the borough’s Primary Capital Programme will continue to be governed by the following criteria as set out in the 2008 PSfC:
- Provide sufficient places at the right time to meet future needs within and between planning localities in the Borough
 - Improve conditions and suitability of schools in order to raise standards
 - Increase the influence of successful and popular schools

- Maximise the efficient delivery of education in relation to the size of the school, removing half-form entries and promoting continuity of education
- Enable school extended services for pupils, parents and communities
- Optimise the Council's capital resources available for investment.

5. Background

5.1 School expansion

5.1.1 The Mayor and Cabinet and the Children and Young People Select Committee have received regular reports detailing the pressure on primary school places and the measures taken to increase supply. A more detailed breakdown of the schools that have offered additional places that have been opened since 2008 and justification for increased places in the locality was more fully set out in the report to Mayor & Cabinet dated 25th June 2014.

6. Proposal to enlarge Sir Francis Drake Primary School from 1 to 2 forms of entry

6.1 On January 15th 2014 Mayor & Cabinet received a report which *inter alia* reported on an opportunity to enlarge SFD as part of the measures to meet the demand for primary places in the Deptford and New Cross Primary Place Planning Locality.

6.2 The enlargement of SFD was contingent on the development of building proposals by the EFA which were satisfactory to the school and the LA, and which did not require an unreasonable cost to the borough beyond the investment made by the EFA.

6.3 At the Mayor & Cabinet meeting of 9 April 2014, the Mayor agreed a consultation on the proposal to enlarge SFD from 1 to 2 Forms of Entry, and to admit 60 pupils with effect from September 2016, subject to the development of satisfactory building proposals in partnership with the EFA. The collaboration required the EFA to project manage the procurement and construction of the building, and the LA to undertake the statutory process to enlarge the school.

6.4 Following the completion of the statutory consultation process, on 25 June 2014 the Mayor agreed to the proposal to enlarge SFD from 1 to 2 forms of entry with effect from September 2016, subject to the development of satisfactory building proposals in partnership with the EFA.

6.5 The EFA then embarked on the development of building proposals and the contractor engagement process for the school.

6.6 At the Mayor & Cabinet meeting on November 14th 2014 the Mayor was asked to note the process of engagement with the school and the EFA to develop a satisfactory building scheme and to agree that a maximum sum of £200,000 be committed to enhance the delivery of the scheme beyond that funded by the EFA.

- 6.7 However, as a result of pricing issues, the contractor withdrew from the programme and the design work previously undertaken was aborted. The EFA will retender the construction contract, which has resulted in significant delay to the project which the EFA is now unable to deliver for occupation in September 2016.
- 6.8 The EFA has now nominated a new contractor for the build programme. The Mayor will be kept informed of the progress of the project which now aims for handover by September 2017.
- 6.9 The LA recognised the need for extra places; however as it is not feasible to accommodate the additional 30 places in line with the proposed expansion until completion of the new building work, it is proposed that the LA make a request to delay the increase in the admissions number for the school.

7 Admission arrangements for 2016/17

- 7.1 The report submitted by the Admissions Team to Mayor & Cabinet on 25 March 2015, set out details of the Local Authority's admissions arrangements for community schools for the academic year 2016/17
- 7.2 That report made a recommendation to the Mayor to agree the Planned Admission Numbers for 2016/17. The Reception intake for Sir Francis Drake was set at 60 places (Appendix H, Determined Admissions Limits 2016/17).
- 7.3 Since the EFA scheme will not be able to deliver the required redevelopment of the site the admissions number of 30 for Sir Francis Drake needs to be reinstated for 2016.
- 7.4 In line with the School Admissions Code, the LA will make representations to the Schools Adjudicator and provide information about the major change of circumstances as outlined in this report and request that the intake for 2016/17 remains at 30 places and plans to increase to 60 place be agreed for 2017/18.

8 Capital Financial implications

- 8.1 In the period 2008/09 to 2016/17 the Government has made available £114.95m through Basic Need Grant. In addition the Council has secured other grants of £18.65m and identified £4.3m of Section 106 monies to support the programme. This makes the total resources available over the period £137.9m. Against these resources, the value of works estimated to be necessary is £ 139.8m to September 2016: This leaves a shortfall of £1.9m. This programme of expenditure is included within the Council's proposed capital programme for 2015 – 2018 which secures Council resources for the balance of £1.9m. The programme identified through to September 2016 is therefore in balance. In the period through to September 2020 additional works of £40m are estimated which includes £37m to meet secondary places demand for which funding will need to be resolved to progress these projects.

If a further secondary school was required this would add £25m to the expected costs.

8.2 Capital Financial Implications

- 8.2.1 The costs for the construction of Sir Francis Drake were intended to be met through the government's Priority Schools Building Programme. However it is now clear that the EFA will not pick additional costs resulting from planning permission requirements. While the costs for these cannot be accurately determined at this stage, an allowance has been made in the expenditure forecasts set out in 8.1 above to fund any contribution toward costs as a result of those measures. The Governing Body has raised concerns about the facilities to be provided as part of the build and asked that the local authority address these. No commitments have been made at this stage but discussions will continue if the proposals proceed as agreed.
- 8.2.2 Although the LA had hoped to secure a rebuilt and expanded school at no cost, the contribution likely to be made will be a small proportion of the costs and could not be otherwise achieved with the resources available currently to the Council.
- 8.2.3 The construction works will provide an additional 30 places in September 2017 rising to a total of 210 additional places over the next 7 years.
- 8.2.4. Although the project is delayed the EFA have taken steps to ensure delivery in September 2017. On this basis, it is recommended that the funds identified to meet the costs of any planning requirements should continue to be held for the project.

8.3 Revenue Financial Implications

- 8.3.1 The revenue costs of running the fully expanded accommodation will be funded from the Dedicated Schools Grant with no burden falling on the General Fund resources of the Council.

9 Legal Implications

- 9.1 The Human Rights Act 1998 safeguards the rights of children in the Borough to educational provision, which the Council 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 schools available for its area i.e. the London Borough of Lewisham, although there is no requirement that those places should be exclusively in the borough. 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 Section 19 of the Education and Inspections Act 2006 provides that where a local authority 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 proposed enlargements of school premises which would increase the capacity of the school by more than 30 pupils and by 25% or 200 pupils (whichever is the lesser), or changes to the age limit of a 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.
- 9.6 The Council, before making any decision regarding the expansion of a school, must ensure that capital funding is in place, interested parties have been consulted, the statutory notice is published and there has been a four week period for representation.
- 9.7 Paragraph 13 of Schedule 3 to the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 requires that subject to any modifications made by the decision maker the proposer must implement a proposal in the form approved.
- 9.8 Paragraph 21 of Schedule 3 to the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 provides that where proposals have been determined the proposers may seek modifications from the decision maker before the approved implementation date. However proposals cannot be modified to the extent that new proposals are substituted for those that have been published. The proposed deferment of the implementation date by a year appears to be a permissible modification.
- 9.9 The Mayor will note that his earlier determination on the proposals was subject to the development of satisfactory building proposals in partnership with the Education Funding Agency. Before agreeing to the modification the Mayor should have regard to and have some assurance that by agreeing to the modification the proposals can be implemented by the deferred date.
- 9.10 Where circumstances have so changed that implementation would be inappropriate or unreasonably difficult consideration of a revocation proposal should be considered by the proposers.
- 9.11 Where a modification is made details of the modification must be published on the web site where the original proposals were published.
- 9.12 Section 88E of the School Standards and Framework Act 1998 provides that an admission authority may propose a variation to their determined admission arrangements where they consider this to be necessary in view of a major

change in circumstances. A variation to decrease a published admission number is required to be referred to the School's Adjudicator.

- 9.7 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 9.8 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.
- 9.9 The duty continues to be a "have regard duty", and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 9.10 The Equality and Human Rights Commission has recently 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:
<http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>
- 9.11 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
1. The essential guide to the public sector equality duty
 2. Meeting the equality duty in policy and decision-making
 3. Engagement and the equality duty
 4. Equality objectives and the equality duty
 5. Equality information and the equality duty
- 9.12 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:
<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

9.13 In deciding whether to agree the recommendations of this report, the Mayor must be satisfied that to do so is a reasonable exercise of his discretion on a consideration of all relevant matters and disregarding irrelevancies and having regard to all Guidance that he is statutorily required to consider.

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. An Equalities Analysis Assessment has been undertaken and is attached as Appendix 8

12 Environmental Implications

12.1 Every effort will be made to enhance rather than detract from school environments in the solutions to providing additional primary place

13 Risk assessment

13.1 There are financial risks if insufficient funding is made available to support the delivery of the programme. There are also significant reputational risks to the Council if it does not meet its statutory requirement to ensure sufficient primary school places are made available.

14 Conclusion

14.1 This report and background papers demonstrate that there is a clear need to expand primary provision to meet demand in the borough and in this locality. The enlargement proposed in this report will provide places in popular and successful schools in areas of high demand. However the expansion will have to be deferred to 2017 in view of the delays to the build programme.

Background Documents

Mayor & Cabinet March 25th 2015

<http://councilmeetings.lewisham.gov.uk/documents/g3503/Public%20reports%20pack%2025th-Mar-2015%2018.00%20Mayor%20and%20Cabinet.pdf?T=10>

Mayor & Cabinet November 12th 2014

<http://councilmeetings.lewisham.gov.uk/ieListDocuments.aspx?CId=139&MId=3426&Ver=4>

Mayor & Cabinet June 25th 2014

<http://councilmeetings.lewisham.gov.uk/documents/g3283/Public%20reports%20pack%2025th-Jun-2014%2018.00%20Mayor%20and%20Cabinet.pdf?T=10>

Mayor & Cabinet April 9th 2014

<http://councilmeetings.lewisham.gov.uk/documents/s28377/Permanent%20Primary%20Places%20Holbeach%20John%20Ball%20Coopers%20Lane%20and%20Sir%20Francis%20Drake.pdf>

Children and Young People Select Committee January 2014

<http://councilmeetings.lewisham.gov.uk/documents/s26896/06PrimaryAndSecondarySchoolPlacesPlanning29012014.pdf>

Mayor & Cabinet January 15th 2014

<http://councilmeetings.lewisham.gov.uk/documents/s26528/Permanent%20Primary%20School%20places.pdf>

Guidance on school organisation changes

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278422/School_Organisation_Guidance_2014_-_Annex_B.pdf

If there are any queries arising from this report, please contact
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