

MAYOR AND CABINET			
Report Title	Decision to change the age range of New Woodlands School		
Key Decision	Yes	Item No.	
Ward	Whole Borough		
Contributors	Executive Director for Children and Young People		
Class	Part 1	Date:	28 February 2018

1. Summary

- 1.1 This report follows on from the Mayor and Cabinet report of 6 December 2017 which reported back on the initial consultation on the proposal to change the age range of New Woodlands School, and requested permission to move to the next stage.
- 1.2 This report provides the results of that period of statutory representation and seeks a decision from the Mayor (as LA Statutory Decision Maker) to change the age range of New Woodlands School.

2. Purpose

- 2.1 The report feeds back on the representation period and seeks a decision from the Mayor regarding the proposal to change the age range of New Woodlands School from Key Stage 1-3 to Key Stage 1-4 with an implementation date of September 2018.

3. Recommendations

- 3.1 The Mayor is recommended;
- 3.2 to note the results of the period of representation on the proposal to change the age range of New Woodlands School.
- 3.3 to agree that New Woodlands School change its age range to include Key Stage 4 with an implementation date of September 2018.

3 Policy Context

- 4.1 The contents of this report are consistent with the Council's policy framework. It supports the achievements of the Sustainable Community Strategy policy objectives:
 - **Ambitious and achieving** – where people are inspired and supported to fulfil their potential.

The proposed recommendations are also in line with the Council's corporate priorities:

- **Young people's achievement and involvement** – raising educational attainment and improving facilities for young people through partnership working.
 - **Protection of children** – better safeguarding and joined up services for children at risk
 - **Inspiring efficiency effectiveness and equity** – 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 education in Lewisham which are appropriate for the 21st century, the implementation of a successful school 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.

Place Planning Strategy 2017-22

- 4.5 A recommendation in the 2016 Lewisham Education Commission Report was for the Council to develop a new 5 year Place Planning Strategy that succeeded the Primary Strategy for Change. Officers reviewed what had gone on before and what needs to be achieved in the future, and the draft strategy went through a public consultation process. The strategy was approved by Mayor and Cabinet on 22 March 2017.
- 4.6 Within the new strategy the council committed to constantly review its forecasting to ensure that the necessary supply of educational places was as accurate as possible, as both undersupply and oversupply can have knock on effects on school standards and finances (both the schools and the councils).
- 4.7 The strategy highlighted the need to re-assess SEND place planning, and identified that this should be an immediate action within year 1 of the new strategy.

School Organisation Requirements

- 4.8 Proposals to either establish additional provision on a permanent basis, and/or to extend 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

4.9 However, it is seen as good practice to have a period of more informal consultation before publishing a statutory notice, to enable officers to have a proper conversation with the local community regarding possible changes and to enable the Mayor to have a fuller understanding of local opinion prior to entering into the formal statutory process.

5. Background

5.1 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

5.2 Following this review, further analysis 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.

5.3 From this analysis the following place needs have been identified;

- An additional 59 Primary SLD places
- An additional 93 Secondary SLD places
- A need to provide KS4 SEMH provision

5.4 The need for a number of these places already exists, as can be shown by existing demand to place young people with SLD needs in the two existing Lewisham SLD schools which are full and in effect oversubscribed. As a result, the Council is having to commission places outside of the Borough, often in expensive independent provision. This is also happening for young people with SEMH needs for those in KS4 as there is currently no existing in-borough provision.

5.5 An initial desktop exercise has found that the additional costs incurred by the council to procure out of borough provision for those young people with SLD needs (that could be accommodated within our two schools were they larger) is £23k/pupil/year. The exercise has also found that the additional costs to procure out of borough provision for those young people with SEMH needs is £40k/pupil/year. This is a cost that the council cannot afford to continue to resource from the High Needs Block and will result in substantial year on year overspends if not tackled as a matter of urgency.

- 5.6 Additionally, it should be noted that placing young people in provision that is further afield does not benefit the young person in terms of social inclusion, a sense of community. There is often 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.
- 5.7 Regarding the opportunities to provide this additional provision, officers have considered the opportunities to extend Watergate School (Primary SLD), Greenvale School (Secondary SLD) and New Woodlands School (SEMH), and have been engaging with the schools and their governing bodies about this. The Governing Bodies of all three schools are supportive of the councils ambitions.
- 5.8 Officers have conducted feasibility studies of the available educational sites and these show that the extra provision can be provided alongside a rationalisation of the educational estate. Specifically; Watergate School can be extended within a wider site redevelopment scheme; Greenvale School can be extended via an annexe on the old Brent knoll School site; and New Woodlands can accommodate KS4 pupils within its existing site.
- 5.9 Whilst there is capital funding available from Basic Need, S106 and the new SEND Capital Grant, it is unlikely that this will cover the full cost of creating additional places. However, given the increasing revenue pressure associated with commissioning yet more out of borough placements (at high costs) officers believe that providing more in-borough places makes financial sense long-term.

6. Initial Consultation Results

- 6.1 The initial consultation regarding the proposal to change the age range of New Woodlands School was held over a six week period from 8 September 2017 through to 20 October 2017. Local residents in the neighbouring streets as well as parents and staff from the school all received letters alerting them to the consultation, inviting them to comment.
- 6.2 A public meeting was held during October at which interested parties had the opportunity to hear more about the proposals from Governors, Head Teacher and Lewisham officers.
- 6.3 By the end of the consultation period we had received 4 responses;
- 6.4 Of the 4 responses received, 1 was in support of the change in age range, 1 was unsure and 2 were against.
- 6.5 The responses in support of the change in age range made the following comments;
- Parents need a choice, presently pupils either remain in mainstream schools that don't meet their needs or are sent out of borough.
 - Extension of age range however should not impact on those currently in the school
- 6.6 Of those against the change in age range, respondents made the following comments;
- Current pupils are badly behaved, and older pupils will be even worse

- Parents currently park all over the road, including in front of driveways and in disabled spaces
- The school is very noisy already, this will get worse.

6.7 Officers believe that the responses firstly highlight that at present there is an absence of provision in the borough for young people with SEMH needs over 14 years old. Respondents also highlight that the school currently caters for young people with “bad behaviour” and suggest that parents behaviour is a problem too. Any such school is a challenge to manage but the change in age range is unlikely to make a significant difference. Officers also note the issues with parking and would suggest that working with parking enforcement would be a prudent action. Overall, officers still believe that this change in age-range is a positive step and as such officers recommended that the Mayor agree to move forward to the next stage of statutory consultation, which he agreed to on 6 December 2017.

6.8 Officers were tasked with completing the Publication and Representation phases and report back to Mayor and Cabinet for final decision.

7. Publication and Representation

7.1 The statutory notices and proposal for the change of age range of New Woodlands School were published on 12 January 2018, with the representation period running for 4 weeks until 9 February 2018.

7.2 During that period we received 3 responses which were all in support of the proposal. Stating that if the proposal provides a better option for those in key stage 4 and at risk of exclusion than is currently available, then the proposal can only be positive, but highlighting the need to ensure that pupils are given the opportunity to achieve meaningful qualifications and life skills. Another respondent questioned why we would not want to accommodate these children within the Borough. The final respondent was happy so long as the number of pupils in the school did not increase.

7.3 In response, officers would like to confirm that New Woodlands will provide a Key Stage 4 curriculum that will include life skills and qualifications that will help pupils into future employment, education or training. Additionally, the proposal does not seek to increase the number of pupils at the school.

7.4 As such, officers recommend that New Woodlands School should have its age range changed to enable it to admit Key Stage 4 pupils from September 2018.

8. 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:

8.1 Consideration of consultation and representation period

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

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

8.2 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 aspirations of parents, raise local standards and narrow attainment gaps.

The decision maker has received information on the relevant schools in the borough, and how this proposal can make a positive impact

The decision-maker should also take into account the extent to which the proposal is consistent with the government's policy on academies as set out on the department's website.

The government's policy on academies does not apply to these proposals.

8.3 Demand

In assessing the demand for new school places the decision-maker should consider the evidence presented for any projected increase in pupil population (such as planned housing developments) and any new provision opening in the area (including free schools).

The Decision maker has received information on the projected demand for places which demonstrates that there is a sustained demand for places

The decision-maker should take into account the quality and popularity of the schools in which spare capacity exists and evidence of parents' aspirations for a new school or for places in a school proposed for expansion. The existence of surplus capacity in neighbouring less popular schools should not in itself prevent the addition of new places.

The Decision maker has received information on demand for places which demonstrates that there is insufficient spare capacity in existing schools

Reducing surplus places is not a priority (unless running at very high levels). For parental choice to work effectively there may be some surplus capacity in the system as a whole. Competition from additional schools and places in the system will lead to pressure on existing schools to improve standards.

The proposals do not cover the removal of surplus places

8.4 School size

Decision-makers should not make blanket assumptions that schools should be of a certain size to be good schools, although the viability and cost-effectiveness of a proposal is an important factor for consideration. The decision-maker should also consider the impact on the LA's budget of the need to provide additional funding to a small school to compensate for its size.

The decision maker has received advice about the financial impact on the school and on the LA budget.

8.5 Proposed admission arrangements (including post-16 provision)

In assessing demand the decision-maker should consider all expected admission applications, not only those from the area of the LA in which the school is situated.

Before approving a proposal that is likely to affect admissions to the school the decision-maker should confirm that the admission arrangements of the school are compliant with the School Admissions Code. Although the decision-maker cannot modify proposed admission arrangements, the decision-maker should inform the proposer where arrangements seem unsatisfactory and the admission authority should be given the opportunity to revise them.

The Decision maker has received information confirming that the school is a community school and that as such the LAs published Admissions arrangements apply.

8.6 **National Curriculum**

All maintained schools must follow the National Curriculum unless they have secured an exemption for groups of pupils or the school community.

The Decision maker has been advised of the outcomes of Ofsted inspections of the school which confirm that they follow the National Curriculum.

8.7 **Equal opportunity issues**

The decision-maker must have regard to the Public Sector Equality Duty (PSED) of LAs/governing bodies, which requires them to have 'due regard' to the need to:

- eliminate discrimination;
- advance equality of opportunity; and
- foster good relations.

The decision-maker should consider whether there are any sex, race or disability discrimination issues that arise from the changes being proposed, for example that where there is a proposed change to single sex provision in an area, there is equal access to single sex provision for the other sex to meet parental demand. Similarly there should be a commitment to provide access to a range of opportunities which reflect the ethnic and cultural mix of the area, while ensuring that such opportunities are open to all.

The proposal has a positive impact on equal opportunity by helping to provide specialist school places for young people within close proximity to their homes.

8.8 **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 must 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 sections within the community.

The Decision maker has received evidence of demand for specialist places in the borough. The provision of sufficient places in local schools will promote community cohesion.

8.9 **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 Decision maker has received advice of the demand for specialist places in the borough. The increase in places will reduce the extended journey times by enabling families to access places in a school within the borough.

8.10 **Capital**

The decision-maker should be satisfied that any land, premises or capital required to implement the proposal will be available and that all relevant local parties (e.g. trustees or religious authority) 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.

The Decision maker has been advised that the relevant land and premises are within the local authority's gift and that the capital costs of the development will be met through the Basic Need Funding, SEND Capital Grant, relevant S106 contributions and Council Capital funds where necessary.

8.11 **School premises and playing fields**

Under the School Premises Regulations all schools are required to provide suitable outdoor space in order to enable physical education to be provided to pupils in accordance with the school curriculum; and for pupils to play outside safely. Guidelines setting out suggested areas for pitches and games courts are in place although the department has been clear that these are non-statutory.

The Decision maker has received advice that following the change in age range of the school there will still be sufficient space for physical education and play. The Decision maker is advised to note that, although Guidelines setting out suggested areas for pitches and games courts are in place, these are non-statutory.

8.12 The Mayor is recommended to agree the proposal to change the age range of New Woodlands School from KS1-3 to KS1-4 with an implementation date of September 2018.

9. **Financial Implications**

Capital Financial Implications

- 9.1 This report recommends that the age range of New Woodlands School be changed to allow it to also accommodate Key Stage 4 pupils. Any capital costs in delivering these changes would be primarily funded from the School Places capital programme, with recent feasibility work identifying a current shortfall of secured capital funding.
- 9.2 The School Places capital programme is forecast to have available resources of £17.7m in 2018/19, £1.0m in 2019/20 and £0.8m in 2020/21. This is made up of Basic Need Grant of £14.4m, S106 contributions of £2.8m and SEND provision capital funding of £2.3m.

Revenue Financial Implications

- 9.3 While the pupil numbers with SEND are expected to grow, the funding from central government is not expected to increase in line with this. Alongside the schools National Funding Formula a separate proposal was put forward by the DfE on how the High Needs funding contained with the DSG is allocated between Local Authorities. Special schools funding is met from this funding source. It is expected that Lewisham's funding will be protected in the first instance but we are not sure how long this protection will last and further details are awaited. The likely revenue consequences of this consultation is in excess of 10% of the high needs block. However not creating these school places will place demand on the same budget for more costly independent special school places. Financial and policy strategies are being worked on alongside the consultation to ensure that the high needs expenditure remains with the resources available. Further proposals to contain expenditure will be agreed with the Schools Forum over the coming months and presented back to the Mayor.
- 9.4 There is no immediate impact on the General Fund. If in the future the High Needs Block overspent then this may fall on the General Fund. The Schools Forum have set up a sub-group to ensure that this does not happen.

10. Legal Implications

- 10.1 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.
- 10.2 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.
- 10.3 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. Local authorities should have regard to amongst other factors the need for securing special educational provision is made for pupils who have special educational needs.

- 10.4 The Education and Inspections Act 2006 places requirements on 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.
- 10.5 The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 provide that proposed enlargements of special school premises which would increase the capacity of the school by more than 10% or 20 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. This does not apply to temporary enlargements where it is anticipated that the enlargement will be in place for less than 3 years, or a rise in the number anticipated lasting only one year.
- 10.6 In considering any reorganisation of special educational provision, proposers need to demonstrate how the proposed alternative arrangements are likely to lead to improvements in the standard, quality and/or range of educational provision for pupils with special educational needs. Decision makers will need to make clear how they are satisfied that this special educational needs improvement test has been met.
- 10.7 Before making any decision regarding the change in age range of a school, or other prescribed change, proposers must ensure that necessary funding required to implement the proposal will be available. A proposal cannot be approved conditionally upon funding being made available. In considering this proposal the decision maker is required to have regard to the statutory guidance for decision makers . A copy of which is found at Appendix 4

Equalities Legislation

- 10.8 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 10.9 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 10.10 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed at 10.8 above.

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

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

www.equalityhumanrights.com/en/advice-and-guidance/equality-actcodes-practice

www.equalityhumanrights.com/en/advice-and-guidance/equality-acttechnical-guidance

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

- The essential guide to the public sector equality duty
- Meeting the equality duty in policy and decision-making
- Engagement and the equality duty: A guide for public authorities
- Objectives and the equality duty. A guide for public authorities
- Equality Information and the Equality Duty: A Guide for Public Authorities

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

www.equalityhumanrights.com/en/advice-and-guidance/public-sectorequality-duty-guidance#h1

11. Crime and Disorder Implications

11.1 There are no crime and disorder implications.

12. Equalities Implications

12.1 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.

12.2 Additionally, the report supports the aspiration that fewer children and young people should need to access specialist provision out of borough and further away from their home and local community than is absolutely necessary.

13. Environmental Implications

13.1 Every effort will be made to enhance rather than detract from school environments in the solutions to providing additional school places.

14. Background documents

Appendix 1 – New Woodlands Representation responses

Appendix 2 – Copy of Proposal to change the age range of New Woodlands School

Appendix 3 – Copy of Statutory Notice to change the age range of New Woodlands School

Appendix 4 – Statutory Guidance for Decision Makers

Delivering additional school places for Children and Young People with Special Educational Needs and Disabilities M&C Report – 6.12.2017

<http://councilmeetings.lewisham.gov.uk/documents/s53926/Delivering%20additional%20school%20places%20for%20Children%20and%20Young%20People%20with%20Special%20Educational%20Needs%20and.pdf>

Delivering SEND Places M&C Report – 19.7.17

<http://councilmeetings.lewisham.gov.uk/documents/s51435/Delivering%20School%20Places%20SEND.pdf>

Place Planning Strategy 2017-2022 M&C Report – 22.3.17

<http://councilmeetings.lewisham.gov.uk/documents/s48786/School%20Place%20Planning%20Strategy%202017-2022.pdf>

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