



Mayor and Cabinet

Report title: Statutory Proposal to close St Mary Magdalen's Catholic Primary School - Decision

Date: 14 July 2021

Key decision: Yes

Class: Part 1

Ward(s) affected: Crofton Park, Whole Borough

Outline and recommendations

This report provides details of the proposal by the Governing Body of St Mary Magdalen's Catholic Primary School to close the school, the associated rationale and implications and further details of the statutory process that has been completed and the feedback from interested parties during both the consultation and representation phases.

The Mayor and Cabinet, as statutory decision maker, are recommended to take the decision to close the school in line with the proposal, and to instruct officers to work with the school, diocese, parents and children to ensure that all existing pupils can access suitable alternative school places.

Timeline of engagement and decision-making

10 March 2021	Cover Report and Governing Body proposal to Mayor & Cabinet
19 April 2021	Stage 1 – Governing Body process for consultation commences
28 May 2021	Close of Stage 1 Consultation
10 June 2021	Governing Body deadline for consideration of changes to proposal following Stage 1 Consultation
11 June 2021	Stage 2 – Governing Body Publication of Proposal

11 June 2021	Stage 3 – Governing Body Representation period commences
9 July 2021	Period of representation closes
14 July 2021	Stage 4 - Decision report to Mayor & Cabinet (as statutory decision maker)
Autumn term 2021	Bespoke admissions round for those pupils still at the school
31 December 2021	Stage 5 – Proposed Implementation of School Closure

REASONS FOR URGENCY AND LATENESS

Lateness: This report was not available for the original dispatch as the period of Representation (stage 3 of the statutory process) did not end until Friday 9 July.

Urgency: The Mayor and Cabinet, as statutory decision maker, have a period of up to 2 months in which to make a decision from the end of the period of representation. This meeting is the only meeting of Mayor and Cabinet scheduled within that 2 month period, as such it is essential that the Mayor and Cabinet receive this report on 14 July.

Where a report is received less than 5 clear days before the date of the meeting at which the matter is being considered, then under the Local Government Act 1972 Section 100(b) (4) the Chair of the Committee can take the matter as a matter of urgency if he is satisfied that there are special circumstances requiring it to be treated as a matter of urgency. These special circumstances have to be specified in the minutes of the meeting.

1. Summary

1.1 The report sets out the details of the statutory process completed to date regarding the proposal from the Governing Body of St Mary Magdalen's Catholic Primary School, Crofton Park to close the school on the basis that the school is not viable.

2.1 1.2 The report then seeks a decision from Mayor and Cabinet, as the statutory decision maker, to close the school within an implementation date of 31 December 2021, Determine that St Mary Magdalen's Catholic Primary School is closed with an implementation date of 31 December 2021.

2.2 That officers work with the affected pupils and parents along with the School, Governing Body and Diocese to ensure that all displaced pupils are found suitable school places elsewhere.

and for officers to work with all parties to ensure that any displaced pupils are found suitable alternative school places.

2. Recommendations

2.3 The Mayor and Cabinet are recommended to:

3. Policy Context

3.1 The recommended decision to close St Mary Magdalen's Catholic Primary School is in line with the following key priority outcome of Lewisham's Corporate Strategy 2018-2022:

3.2 Giving children and young people the best start in life – every child has access to an outstanding and inspiring education and is given the support they need to keep them safe, well and able to achieve their full potential.

3.3 Additionally the Local Authority has a duty to ensure the provision of sufficient places for pupils of statutory school age; at present a falling birth rate means that we are currently reducing the number of places in our Primary schools to prevent oversupply and allow schools to plan on a more stable footing.

Place Planning Strategy 2017-22

3.4 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 occurred previously and what needed

to be achieved in the future. Subsequently the draft strategy went through a public consultation process. The strategy was approved by Mayor and Cabinet on 22 March 2017.

- 3.5 Within the new strategy the Council committed to constantly review its forecasting to ensure that the supply of school places met need as accurately as possible, as both undersupply and oversupply can have knock on effects on school standards and finances.

School Organisation Requirements

- 3.6 Proposals to close a school must comply with the provisions set out in *The Education and Inspections Act 2006 (EIA 2006)* and *Opening and Closing Schools - Statutory Guidance for Proposers and Decision Makers, November 2019* (Appendix 2). These set out the statutory process for closing a school, and the statutory guidance on closing a maintained school indicates 5 stages to be completed. These are:
- 1) Consultation
 - 2) Publication of a Statutory Notice
 - 3) Representation period
 - 4) Decision making
 - 5) Implementation
- 3.7 In the case of a Voluntary Aided (VA) school (which St Mary Magdalen's Catholic Primary School is) the Governing Body can propose and conduct the Consultation, Publication and Representation periods, with the local authority (as statutory decision maker) then making the decision.

4. Background

Initial Proposal from the Governing Body

- 4.1 The Governing Body of St Mary Magdalen's Catholic Primary School and the Archdiocese of Southwark Education Commission have been in discussions with officers since Autumn 2020 regarding the future of the school. The school at present is struggling to operate as in the recent past it has had a drastically reduced cohort, falling student rolls and a deficit budget. As such the Governing Body believe the school to be non-viable, and that pupils would be effectively educated elsewhere.
- 4.2 The Governing Body with the support of the Diocese have made the decision that the school is unviable, for a range of factors detailed in their original proposal at Appendix 1, including:
- Parental Support/Reputation
 - Falling rolls/Reducing primary numbers forecast in Lewisham
 - Deficit Budget/Finances
- 4.3 The school is currently rated as 'Red' by the local authority and as such has been receiving significant additional support, however the numbers on roll continue to fall.
- 4.4 The Governing Body proposal refers to the reduction in future primary school pupil numbers forecast by the Council. The relevant context of this is that the Council has reduced the number of Council-wide Reception places over the past 4 years from 3900

to 3660 (for 2021), and forecasting shows that further reductions need to take place over the coming years.

- 4.5 With regards to places available in neighbouring schools for potentially displaced pupils, the Governing Body proposal refers to local Catholic schools in particular and also mentions the spare capacity across the wider Lewisham schools within a 1 mile radius. As of 9 July 2021 there were 66 pupils on roll at St Mary Magdalen, spread across the 7 year groups as follows:

Year Group	Starting School in September	YR	Y1	Y2	Y3	Y4	Y5	Y6	Total
Numbers on roll	6	7	11	8	6	7	5	22	66

Note Y6 will be moving on to Secondary School at the end of this term.

- 4.6 Also, as of the 9 July 2021, there were a total of 579 spare places at the 19 Lewisham schools within a 1 mile radius, and a further 148 places in local Catholic Primary Schools (St Saviours, St Matthew Academy, St Winifreds). Officers therefore agree that there are sufficient places in local schools to be able to accommodate any pupils that may be displaced as a result of the proposed closure, specifically:

School	Ofsted rating	Starting School September 2021	YR	Y1	Y2	Y3	Y4	Y5	Y6	Total
Ashmead	Good	1	0	2	0	19	3	1	8	33
Beecroft Garden Primary School	Good	2	0	0	0	2	3	12	16	33
Dalmain Primary School	Good	0	6	7	11	5	8	4	19	60
Edmund Waller Primary School	Good	4	4	3	7	9	9	19	4	55
Gordonbrock Primary School	Outstanding	1	0	0	0	13	2	7	5	27
Haberdashers' Aske's Hatcham Temple Grove	Outstanding	1	0	2	3	3	4	0	2	14
Haberdashers' Aske's Hatcham Temple Grove Free School	Outstanding	0	0	0	0	1	0	0	1	2
Holbeach Primary School	Good	0	0	0	0	11	14	8	13	46
John Stainer Primary School	Outstanding	0	1	3	0	2	10	5	10	31
Lucas Vale Primary School	Requires Improvement	15	0	5	15	15	16	18	4	73
Myatt Garden School	Good	1	2	3	0	8	4	12	2	31
Prendergast Ladywell School	Good	3	0	0	0	0	10	0	5	15
Prendergast Vale School	Good	0	0	0	3	0	4	4	1	12
St Mary's Lewisham C E Primary School	Good	1	2	1	0	0	2	1	2	8
St Matthew Academy	Good	11	26	1	5	32	32	12	7	115
St Saviour's Catholic Primary School	Good	0	0	0	0	0	2	0	9	11
St Stephen's CE Primary School	Good	2	0	6	4	0	2	4	0	16
St William of York Catholic School	Good	3	5	0	0	0	0	2	5	12
St Winifred's Catholic Primary School	Good	7	1	2	0	11	3	1	4	22
Stillness Infant School	Outstanding	1	0	4	8					12
Stillness Junior School	Good					15	11	12	22	60
Turnham Academy	Good	2	0	0	0	5	9	12	13	39
Total		55	47	39	56	151	148	134	152	727

Statutory Process

- 4.7 The Governing Body commenced the Statutory Consultation process with (Stage 1) initial consultation running from 19 April 2021 to 28 May 2021. During this time all parents and staff were written to so that they could engage with a public consultation process, including 2 online meetings. This was also advertised via the council website and communicated to all Lewisham schools and admissions authorities.
- 4.8 The initial consultation information (appendix 2), minutes from the two meetings (appendix 3 and 4), post consultation letter from the chair of governors (appendix 5) and governing body report (appendix 6) are all included as appendices to this report. These documents have also been published on the council website, along with

information regarding pupil forecasts as committed to by council officers during the public meetings (appendix 7)

- 4.9 Following the initial consultation period, the governing body met and considered the responses to the consultation and decided to move forwards with the statutory process for closure of the school.
- 4.10 The governing body published (Stage 2) the Statutory Proposal to close St Mary Magdalen's Catholic Primary School on 11 June 2021 (appendix 8) and the period of representation commenced (Stage 3), running through to 9 July 2021.
- 4.11 Due to the Mayor and Cabinet being the statutory decision maker, the proposal directed those wishing to make representations to a designated council officer to ensure that this decision report could be produced in good time.
- 4.12 There was 1 representation made which can be found in full (anonymised) form at appendix 10. This can be summarised as follows;
- Continued concerns that when issues were raised in 2018 that appropriate measures and support were not put in place soon enough
 - That with time and further support the school could turn around its reputation and number of pupils on roll.
 - That interested parties haven't had time to respond to the consultation.
- 4.13 In response, officers began working with the diocese and the schools when issues came to light following the annulling of SATs results in 2018. It should be noted that Ofsted last inspected the school in Spring 2018 and confirmed the school to be 'Good'. Since 2018 a lot of effort has been put into helping the school improve and move forwards, with the diocese bringing in a new experienced Chair of Governors, Executive Headteacher and Head of School, supported by council officers.
- 4.14 The decision to consult regarding closure was made by the Governing Body in part as a result of the falling roll at the school (150 pupils were on roll in January 2021) and the impact that has on the funding for the school, and subsequently the ability to provide a high standard of education for pupils. This is compounded by the reduction in pupils in Lewisham schools as whole and a falling birth rate (nationally) which suggests that there won't be an increase in demand for places in the short to medium term.
- 4.15 The statutory process has been carried out in line with guidance, and has presented two opportunities for interested parties to feed in formally via the initial consultation and representation periods, which were 6 weeks and 4 weeks in length respectively.
- 4.16 Additionally a petition against the proposed closure has been lodged on the council website signed by 117 individuals. Fuller details can be found in appendix 11 and online.

5. Factors to be considered when making school organisation decisions

5.1 Demand and Need

When determining proposals to discontinue (close) provision, the decision-maker should be satisfied that there are sufficient surplus places elsewhere in the local area to accommodate displaced pupils, and the likely supply and future demand for places in the medium and long term.

The decision-maker should take into account the overall quality of alternative places in

the local area, balanced with the need to reduce excessive surplus capacity in the system. The decision-maker should have regard for the local context in which the proposals are being made, taking into account the nature of the area, the age of the children involved and, where applicable, alternative options considered for reducing excess surplus capacity.

- 5.2 *The table in 4.6 above shows both the Ofsted ratings and spare places for each school within a 1 mile radius of St Mary Magdalen's Catholic Primary School with places available, plus the other 3 local catholic primary schools. As can be seen there are a total of 727 spare places in these schools, of which 654 are in schools rated Good or Outstanding. Therefore there is sufficient local capacity for displaced pupils.*

Appendix 7 shows the most recent set of pupil forecasting for the borough, which shows a continued drop in anticipated pupil numbers. Indeed over the past few years the council has been working with schools to reduce the oversupply, and this is a continuing trend.

- 5.3 Equal opportunity issues

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

- eliminate discrimination;
- advance equality of opportunity; and
- foster good relations between people with a protected characteristic and those without that characteristic.

The decision-maker must consider the impact of the proposals on the relevant protected characteristics and any issues that may arise from the proposals (e.g. where there is a proposal to establish new single sex provision in an area, there is equal access to single sex provision for the other sex to meet parental demand). Decision-makers should be satisfied that the proposer has shown a commitment to providing access to a range of opportunities which reflect the ethnic and cultural mix of the area, whilst ensuring that such opportunities are open to all.

- 5.4 *Of the 66 pupils currently on roll at the school, 61 are BAME, and 3 pupils (1 in year 6) have Education, Health and Care Plans (EHCPs).*

As can be seen from the availability of spaces in local schools (table at 4.6) there are more than sufficient places for all pupils to access suitable provision that is rated by Ofsted as Good or Outstanding (St Mary Magdalen's Catholic Primary School had a rating of Good at it's last Ofsted), should the decision be made to close the school.

Regarding those that have EHCPs, should a decision be made to close the school, then the council will work with those families to ensure that suitable provision is identified that is at least as good.

- 5.5 Travel and accessibility

The decision-maker should satisfy themselves that the proposers have been taken into account accessibility planning and that the proposal will not adversely impact on disadvantaged groups.

Decision-makers should consider whether the proposal will 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. The decision-maker will need to consider the local context, for example in areas with excessive surplus places, the decision-maker should consider whether the travel implications of the proposal are reasonable compared to those for alternative options. 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.

5.6 *As can be seen in the table at 4.6 above, there are 579 spare places in the Lewisham schools within a 1 mile radius of St Mary Magdalen's Catholic Primary School, enabling pupils to find alternative school places within a reasonable distance.*

5.7 Schools causing concern

In determining proposals, decision-makers must ensure that the guidance on schools causing concern (intervening in failing or underperforming schools) has been considered where necessary.

5.8 *This proposal for closure is not being made under the guidance for local authorities and for schools causing concern.*

5.9 Balance of denominational provision

In deciding a proposal to close a school that has been designated with a religious character, decision-makers should consider the effect that this will have on the balance of denominational provision in the area, as well as taking account of the number of pupils currently on roll, the medium and long term need for places in the area, and whether standards at the school have been persistently low.

Decisionmakers should consider what impact the proposal will have on the balance of denomination provision in the area, the quality of the provision available (particularly when proposing a merger) and parental demand in the area for the different types of provision.

5.10 *The table in 4.6 above shows the spare places for each school within a 1 mile radius of St Mary Magdalen's Catholic Primary School, plus the other 3 local catholic primary schools, totaling 727 of which 160 are in catholic schools. Therefore there is sufficient local capacity for displaced pupils within both catholic and non-denominational provision.*

Appendix 7 shows the most recent set of pupil forecasting for the borough, which shows a continued drop in anticipated pupil numbers. Indeed over the past few years the council has been working with schools to reduce the oversupply, and this is a continuing trend. This trend is reflective of all types of school including those as designated with a religious character.

5.11 Community services

Some schools may be a focal point for family and community activity, providing extended services for a range of users, and their closure may have wider social consequences. Where the school is providing access to extended services, provision should be made for the pupils and their families to access similar services through their new schools or other means.

The school is not used to deliver other services or hired by the local community.

5.12 Mayor and Cabinet are recommended to agree the closure of St Mary Magdalen's Catholic Primary School within an implementation date of 31 December 2021.

6. Financial implications

Capital Financial Implications

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

Revenue Financial Implications

6.2 The school in line with the Lewisham Funding Formula has been allocated £894k for the financial year 2021/22. The funding should not reduce as a consequence of closure and should enable supporting some of the "fall out" costs arising from closure. The school also receives some grant related funding which is likely to be subject to claw back with a projected position of circa £80k.

- 6.3 There is likely to be costs arising from the closure as a consequence of the following which would add to the “Business as Usual”
- Redundancy costs
 - Potential early termination of any contracts
 - Winding down costs
- 6.4 The budget remains under delegated authority to the school, Lewisham will continue to monitor spend and work effectively with Governing Body and School to ensure that as much as possible of the funding is set aside to support the above.
- 6.5 The final financial liability will not be known until later in the year. Whilst the LA is continuing to work with the school to limit the overall liability, it would be prudent to assume something in the region of between £200k to £400k is a possibility.
- 6.6 It is anticipated that in addition to the work being undertaken with the school to manage spend, there may be some possible negotiations with the Diocese to mitigate the final potential pressure.
- 6.7 It should be noted that any final overspend position will place a pressure on the overall corporate resources of the council.
- 6.8 Any costs arising from the 1st January 2022, are expected to be met from the Diocese such as security.

7. Legal implications

- 7.1 This report considers the proposal made by the school regarding closure, the details of the statutory process conducted and then Mayor and Cabinet are asked to make decision on closure, as the statutory decision maker.
- 7.2 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. 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.
- 7.3 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.
- 7.4 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 15 of the Education and Inspections Act 2006 provides that where the governing body of a voluntary aided school proposes to close a maintained school and it is permitted to make that alteration, it must follow the 5 stage statutory process.

- 7.5 In relation to the proposal to close St Mary Magdalen’s Catholic Primary School, the relevant statutory Guidance (to which regard must be had; it is at Appendix 9 of the report) states that the local authority is the decision maker as referred in the above

timetable at Stage 4 of the Statutory Consultation Process. The decision must be made within a period of two months of the end of the Stage 3 representation period or be referred to the Schools Adjudicator. Therefore when making the decision which is now proposed about whether to close the school, Mayor and Cabinet will need to be satisfied that the appropriate statutory consultation, publication, and representation process has been carried out and that the proposer has had regard to the responses received. This report covers those matters, and Mayor and Cabinet must consider all the views submitted, including all support for, objections to and comments on the proposal.

- 7.6 This is a key decision given this report relates to ‘the closure or significant change in the character of a school ...’.

Equalities Legislation

- 7.7 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.
- 7.8 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.
- 7.9 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 6.7 above.
- 7.10 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.
- 7.11 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
- 7.12 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

7.13 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

8. Equalities implications

8.1 61 of the 66 pupils currently on roll at the school are BAME, and 3 pupils have an EHCP.

8.2 There are sufficient places in local schools to accommodate all pupils that may be displaced in a school that is 'Good' or better, and officers are ready to work with parents to ensure that any applications to alternative schools and transitions are completed in a fair and assistive manner.

9. Climate change and environmental implications

9.1 There are no climate change and environmental implications.

10. Crime and disorder implications

10.1 There are no crime and disorder implications.

11. Health and wellbeing implications

11.1 There are no health and wellbeing implications

12. Appendices

12.1 Appendix 1 - Outline proposal prepared by the Governing Body of St Mary Magdalen School for Mayor and Cabinet

12.2 Appendix 2 - Initial consultation information

12.3 Appendix 3 - Minutes from public consultation meeting – 22 April 2021

12.4 Appendix 4 - Minutes from public consultation meeting – 5 May 2021

12.5 Appendix 5 - Letter from Chair of Governors post consultation

12.6 Appendix 6 - Initial consultation Governing Body Report

12.7 Appendix 7 - Lewisham School Place Forecasting information

12.8 Appendix 8 - Statutory Proposal to close St Mary Magdalen's Catholic Primary School

12.9 Appendix 9 - Opening and closing maintained schools

12.10 Appendix 10 - Responses received during representation period

12.11 Appendix 11 - Petition against the proposed closure

13. Report author and contact

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

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

14.1 Mala Dadlani, Malasona.Dadlani@lewisham.gov.uk

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

15.1 Stephanie Fleck, stephanie.fleck@lewisham.gov.uk Principal Lawyer 0208 314 9968