

Central Bedfordshire Council

EXECUTIVE

1 December 2015

Determination of proposals to Amalgamate Arlesey Nursery School and Childcare Centre with Gothic Mede Academy, Arlesey and to Amalgamate The Lawns Nursery School and Children's Centre, Biggleswade with Biggleswade Academy Trust

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Key Decision

Purpose of this report

1. To provide Executive with the outcome of consultations for the proposal to amalgamate Arlesey Nursery School and Childcare Centre with Gothic Mede Academy, and the proposal to amalgamate The Lawns Nursery School and Children's Centre, Biggleswade with Biggleswade Academy Trust.
2. To approve the closures of Arlesey Nursery School, Arlesey and The Lawns Nursery School, Biggleswade from 31 December 2015, to enable the amalgamation proposals as set out in the report to be implemented from 1 January 2016, subject to the approval by the Department for Education of the proposals by Gothic Mede Academy and Biggleswade Academy Trust, to expand and change their age ranges.
3. The schools referred to within the report serve the Wards of Biggleswade North, Biggleswade South, Stotfold & Langford and Arlesey.

RECOMMENDATIONS

The Executive is asked to:

1. **accept, as outlined in the Legal implications section of this report, that the procedures established by The Education and Inspections Act 2006 (EIA 2006) and The School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2013, have been complied with in bringing forward the proposals set out within this report;**

- 2. note the responses received to the consultations undertaken for each proposal, as set out within the report;**
- 3. confirm that four representations were received in respect of the proposal to close Arlesey Nursery School, Arlesey and the statutory notice as set out in Appendix A, issued on the 14 October 2014 under Section 15(1), of the Education and Inspections Act 2006;**
- 4. confirm that no representations were received in respect of the proposal to close The Lawns Nursery School, Biggleswade and the statutory notice as set out in Appendix B, issued on the 14 October 2014 under Section 15(1), of the Education and Inspections Act 2006;**
- 5. approve the statutory proposals to:**
 - a) close Arlesey Nursery School and Childcare Centre with an implementation date of 31 December 2015 to enable amalgamation of the provision with Gothic Mede Academy with effect from 1 January 2016, subject to approval by the Department for Education; and**
 - b) close The Lawns Nursery School and Children's Centre, Biggleswade with an implementation date of 31 December 2015 to enable amalgamation of the provision with Biggleswade Academy Trust with effect from 1 January 2016, subject to approval by the Department for Education.**
- 6. approve the allocation of dedicated schools grant (DSG) to the same value as any surplus that exists at the point of closure of the Lawns Nursery School and Arlesey Nursery School, to the successor Academies; and**
- 7. approve the transfer of the existing land and buildings used by each Maintained Nursery to the respective Academies, under Academy leases, to continue to be used as Nursery provision.**

Children's Services Overview and Scrutiny

4. A report was presented to Children's Services Overview and Scrutiny Committee at its meeting on the 15 June 2015 and the Committee indicated its support for the recommended consultations as set out within that report.

Outcome of consultations

5. On 7 July 2015 the Council's Executive approved the recommendations of a report to undertake consultation and publish statutory notices for the proposals to amalgamate Arlesey Nursery School with Gothic Mede academy and to amalgamate The Lawns Nursery School with Biggleswade Academy Trust.
6. The proposals were made as a result of a need to make permanent arrangements for the leadership, governance and future viability of both Nursery Schools. The original report setting out the background to the proposals can be viewed at agenda item 10 at :

<http://centralbeds.moderngov.co.uk/ieListDocuments.aspx?CId=577&MId=4989&Ver=4>
7. The initial consultation period for each proposal commenced on 7 September 2015 and concluded on 5 October 2015. The Council worked in partnership with each of the Nursery schools and the Academies with whom they are proposed to amalgamate to undertake the consultation which included public and staff meetings.
8. The consultation materials, minutes of the public and staff meetings and copies of all responses, are attached at Appendix A and Appendix B to this report.
9. The consultation on the proposal to amalgamate Arlesey Nursery School with Gothic Mede academy received 40 responses, of which 80% agreed with the proposal. 72% of respondents were parents of a child at the Academy or the Nursery.
10. Respondents recorded a need for wrap around care in the area and many were supportive of the positive impact on improved transition that the proposal offers. Concerns were raised of the need to differentiate between play for the 2 year olds and for the older children.
11. The responses received and the reactions of Gothic Mede Academy to the points raised in this initial consultation are contained in Appendix A to this report.
12. The consultation on the proposal to amalgamate The Lawns Nursery School with Biggleswade Academy Trust received 56 responses, of which 29% agreed with the proposal. 52% of respondents were parents of a child at the Academy or the Nursery.
13. Those respondents who disagreed with the proposal recorded concerns that another school or schools should partner with the Nursery instead of Biggleswade Academy Trust, and of the culture and structure of academies. Respondents were also concerned that the Nursery should retain its own identity.

Respondents who agreed with the proposal stated that they were supportive of amalgamation and the need to retain parental choice was also recorded.

14. The responses received and the reactions of Biggleswade Academy Trust and of the Governing Body of The Lawns Nursery to the points raised in this initial consultation are contained in Appendix B to this report.
15. One of the common concerns raised by a number of respondents was why the adjacent Lawnside Lower School was not chosen by the Governing Body of The Lawns Nursery or by the Council, as the strategic partner with whom to amalgamate instead of Biggleswade Academy Trust.
16. The Governing Body of the Nursery has responded to that specific point in its reply in Appendix B to this report. The initial partnership, supported by Central Bedfordshire, was a school driven proposal as is the proposal to formalise it now in an amalgamation. This is totally consistent with the Council's approach to support schools to consider new models of leadership and governance in order to raise standards and secure the financial and educational viability of schools. All schools were advised of the consultation via our schools newsletter Central Essentials on 11 September 2015.

Outcome of Statutory Notices and Representation Period

17. Statutory Notices were published for each proposal on 14 October 2015 and the representation period concluded on 11 November 2015. The notices invited stakeholders wishing to respond to register their support or objection to the proposals or to simply provide a comment.
18. No representations were received in relation to the statutory notice for the proposal to close The Lawns Nursery School and Childcare Centre, Biggleswade.
19. Four representations were received in relation to the statutory notice for the proposal to close Arlesey Nursery School and Childcare Centre. Of these, two registered in support of the proposal, one registered an objection and recorded a comment and the final representation simply recorded a comment.
20. The comment recorded by the respondent, a local resident who registered an objection to the proposal, stated the following:

"We need Arlesey Nursery to continue the great work they do, many children I know have been there / are attending and the care they receive is second to none."

21. The second respondent, also a local resident, who recorded a comment but chose not to state whether they were in overall support or objection to the proposal, stated the following:

“If Gothic Mede has the space and resource to take the children from Arlesey Nursery School and continue to offer the value, care and attention that children receive there then I support the amalgamation.

But when Gothic Mede is already oversubscribed, and children like mine who will be attending the school could possibly not get a place, despite living in the catchment area, then I wonder how it can cope with more children. Has this been taken in to consideration - where are the funds and resource coming from?”

22. Gothic Mede Academy has considered each of these representations and has reiterated that one of the key aims of the merger is to preserve the current provision which would otherwise be unsustainable and to expand the excellent work currently noted in the future. The Academy has also stated that the Nursery class will continue to be taught in the Nursery building with the same staff for the foreseeable future therefore there is no impact on the accommodation within the Academy. The Nursery children will continue to receive the appropriate funding as now.
23. Each Academy has considered the outcomes of the initial consultations and of the representations received and have agreed that they wish to proceed with the proposals. As a result they have submitted fast track change applications to the Department for Education (DfE) to secure approval for the changes in age range and expansions that the amalgamations represent.

Reasons for decision

24. The recommendations to close Arlesey Nursery School and Childcare Centre and The Lawns Nursery School and Children's Centre, to enable amalgamation of the settings with Gothic Mede Academy and Biggleswade Academy Trust respectively, are to ensure the Council continues to meet its statutory obligations to secure sufficient childcare and early years provision and also to meet the legal requirements placed on the Council by the Education and Inspections Act 2006 regarding proposals to close maintained schools.
25. If approved, all legal and financial obligations of the former schools and of the Local Authority will transfer to the relevant Academies as of 1 January 2016.

Council Priorities

26. The report supports Central Bedfordshire's Medium Term Plan: Delivering your priorities – Our Plan for Central Bedfordshire 2012-2016 and the specific priority of Improved Educational Attainment.

Legal Implications

27. The Childcare Act 2006 places duties on English local authorities, as far as is reasonably practical, to secure sufficient childcare for working parents (Section 6) and early years provision (Section 7, as substituted by section 1 of the Education Act 2011).
28. The main legislation governing school organisation is found in sections 6A-32 of the Education and Inspections Act 2006, The School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2013 and the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013.
29. Department for Education Guidance for proposers and decision makers regarding school organisation in maintained schools was published in January 2014 (The Guidance) to support the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013. Local Authorities must have regard to this Guidance.
30. This Guidance can be viewed at:
<https://www.gov.uk/government/publications/school-organisation-maintained-schools>
31. The Council is able to propose the closure of maintained schools and is also decision maker for those proposals. Any decision related to school closure must follow a 5 stage statutory process in line with the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2013. The process involves:
 - Consultation
 - Publication
 - Representation
 - Decision
 - Implementation
32. There is a statutory duty upon a Local Authority to consult on proposals to close a maintained school. There is no statutory consultation period. However, a minimum of six weeks' consultation in term time is recommended by the DfE. Guidance as to consultees and information to be included in a proposal to close a school is set out in the DfE Guidance (referred to above) at Annex A.3 and A.4. The Representation period must be 4 weeks.

33. A proposal should be published within 12 months of consultation being concluded. In determining proposals of this nature the decision maker must consider any comments made during consultation and may decide to reject, approve, approve with modifications or conditions (e.g. the implementation date), having consulted the Local Authority (LA) and/or governing body (as appropriate) or approve with or without modification, subject to certain prescribed events (such as the granting of planning permission) being met. In any case, the reasons for the final decisions must be carefully recorded indicating the main factors considered and the reasons for the decision.
34. The DfE Guidance for decision makers of school organisation proposals contains a number of key factors to be considered and information to be included along with the views submitted throughout the consultation process, including all objections to and comments on the proposals. The Guidance is clear that these factors should not be taken to be exhaustive and all proposals should be considered on their individual merits.
35. The factors outlined in statutory Guidance for school organisation proposals, and specifically for closure proposals include:
- Consideration of consultation and representation period
 - Implementation proposals
 - Objectives and reason for closure
 - Education standards, diversity of provision and flexibility of access for parents
 - Demand
 - School size
 - Proposed admission arrangements
 - National curriculum
 - Equal opportunity issues
 - Community cohesion
 - Travel and accessibility
 - Capital
 - School premises and playing fields.
 - Displacement of pupils
 - Integration of pre school education with childcare services
36. Under Schedule 2 to the Establishment and Discontinuance Regulations, where a proposal relates to Nurseries, a statement must set out the Local Authority's assessment of the quality and quantity of the alternative provision compared to the school proposed to be closed and the proposed arrangements to ensure the expertise and specialism continues to be available and the accessibility and convenience of replacement provision for local parents.

37. DfE Guidance is clear that there is a presumption against closure of nursery schools and that although this does not mean that a nursery school will never close, the case for closure should be strong and demonstrate that the alternative arrangements will be at least equal in terms of the quantity of provision provided by the nursery with no loss of expertise and specialism and is more accessible and more convenient for local parents.
38. Where a school includes early years provision, the DfE Guidance advises the decision maker to consider whether the alternative provision will integrate pre-school education with childcare services and/or with other services for young children and their families. Also, whether the alternative provision will maintain or enhance the standard of educational provision for early years and flexibility of access for parents.
39. The consultation period was shorter than the 6 week minimum recommended by the Guidance. This period is not a statutory requirement but does leave the process exposed to challenge. This is particularly sensitive where a nursery is closing where there is a presumption against closure of nurseries and particularly where there has been minimal support of the closure of Lawns Nursery.
40. There must therefore be careful consideration of the merits of closure and the objections to this. However, the statutory 4 week representation period has been carried out and therefore the statutory requirements have been met in bringing forward the proposals in this report. It is understood that the Executive has had due regard to the responses received during consultation and the representation period by publishing stakeholder response within this report, alongwith the reaction of the relevant Governing Body and Academy Trust.
41. According to the DfE Guidance, proposals to replace a school with provision in a more successful /popular school should normally be approved, subject to the evidence provided.
42. A copy of the final decision must be published on the website where the original proposal was published and forwarded to a range of bodies specified in the DfE Guidance referred to in paragraph 56 above.
43. Annex B to that Guidance provides further information on the list of factors mentioned above, which must be taken into account.
44. Within 1 week of the date of publication on the website, the proposer must send a copy of the proposal and the information set out above to the Secretary of State and any other body or person that the proposer thinks is appropriate.

45. If the Council were to fail to decide this proposal within 2 months of the end of the representation period it must forward the proposal, and any received representations, to the schools adjudicator for decision.
46. Certain religious bodies and the governors and trustees of certain schools may appeal against a decision made by the Local Authority as decision maker, within 4 weeks of the decision being made.
47. Once proposals have been implemented, the Local Authority must inform the Secretary of State.
48. The DfE Guidance for Academies wishing to make significant changes including proposals to change age range or to expand can be viewed at: <https://www.gov.uk/government/publications/making-significant-changes-to-an-existing-academy>.
49. The process, overseen by the Education Funding Agency on behalf of the DfE requiring an Academy to undertake consultation and to obtain consent of the Secretary of State before implementation, has been followed. Applications have now been submitted for approval to the EFA by each Academy Trust.

Financial Implications

50. There are no capital implications for the Council arising as a result of the proposals set out in this report.
51. The day to day running costs of early years and childcare provision is met through revenue funding which is made available to each setting as part of the Dedicated Schools Grant and Central Bedfordshire's Nursery Education Funding.
52. Central Bedfordshire's Scheme for Financing Schools sets out that when a school closes, any balance (whether surplus or deficit) shall revert to the LA and cannot be transferred as a balance to any other school, even where the school is a successor to the closing school (except that a surplus transfers to an Academy where a school converts to academy status under section 4(1)(a) of the Academies Act 2010).
53. However, the LA may, if they wish, make allocations to schools, which have the effect of giving them the benefit of additional sums that are equal to or less than the surplus balances of relevant closing schools.
54. Both of the Nursery Schools identified in this report are currently holding surplus balances, although diminishing. If the proposals contained within this report are approved by Executive it is recommended to allocate dedicated schools grant to the same value as any surplus that exists at the point of closure, to the successor Academies.

55. As set out in the report, it is proposed to transfer the existing land and buildings used by each Maintained Nursery to the respective Academies, under an Academy lease adapted to meet local conditions which will retain the buildings for their current use but also transfer repair and maintenance obligations to the Academy Trusts.
56. Both Nurseries have benefitted under Bedfordshire County Council from DfE capital grants which as a result of grant conditions require DfE approval to be sought on transfer of the assets, in order to avoid clawback of the original capital grant.
57. DfE officers have advised that a deferral of the clawback on these grants will be considered on application, especially given the continuation of the services for which the original grants were given, the time expired since the grants were allocated and the fact that the leases to be agreed with the Academies will ensure there is no change in the predominant early years usage of the assets.

Equalities Implications

58. The consultation and decision making process set out in regulation for proposals to expand Academies and close Council maintained schools requires an evaluation on a project by project basis of any equalities and human rights issues that might arise.
59. Public authorities have a statutory duty to promote equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and to foster good relations in respect of the following protected characteristics: age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
60. This statutory duty includes requirements to:
 - i. Remove or minimise disadvantages suffered by people due to their protected characteristics.
 - ii. Take steps to meet the needs of people from protected groups where these are different from the needs of other people.
 - iii. Encourage people from protected groups to participate in public life or in other activities where their participation is disproportionately low.
61. As proposer of the closure of the two schools as set out in this report, and in light of the amalgamation proposals, the Council has considered that there are no equality implications that arise from the change being proposed.

Risk Management

62. The proposals to close the maintained nurseries outlined in this report, to enable amalgamations to be implemented and enable continuation of each setting mitigates the risk on the Council of failing in its statutory duty to secure sufficient childcare for working parents and early years provision.
63. Key risks mitigated by these proposals include:
- Failure to discharge legal and statutory duties/guidance.
 - Failure to deliver the Council's strategic priorities
 - Reputational risks associated with the non delivery of required childcare and early years places.

Staffing (including Trades Unions)

64. Staff and Trades Unions are consulted on all school organisation proposals related to schools and Academies as part of the informal and statutory process required by regulations and DfE Guidance.
65. The Council's Schools Statutory HR Team has supported the Governing Body of each Nursery in completing the TUPE consultation and transfer process with staff and Trade Union representatives.
66. The staff of The Lawns Nursery School and Children's Centre are proposed to transfer to Biggleswade Academy Trust. Those staff of Arlesey Nursery School and Childcare Centre who support 0-2 year old children are proposed to transfer to Bedfordshire East Schools Trust Nurseries Ltd, and the remainder are proposed to transfer to Bedfordshire East Multi Academy Trust, as proposed in the Academy's business case reported to Executive in July 2015.
67. Each School and Academy will continue to have the support of their commissioned HR Providers where any measures (changes) associated with the TUPE are proposed by the Academy.

Appendices

The following Appendices are attached

Appendix A – Arlesey Nursery School, consultation materials, responses, Statutory Notice and business case.

Appendix B – The Lawns Nursery School, consultation materials, responses, Statutory Notice and business case.