
Meeting: Executive

Date: 27 May 2014

Subject: **Determination of the Statutory Proposal of the Governing Body of Ashton CofE Voluntary Aided Middle School to Change the School's Age Range from a 9 to 13 years Middle School to an 11 to 16 years Secondary School with effect from September 2015**

Report of: Cllr Mark Versallion, Executive Member for Children's Services

Summary: This report outlines a significant change proposed by the Governing Body of Ashton Middle School, a Church of England Voluntary Aided school in Dunstable. The prescribed alteration being proposed by the school is an alteration of its existing upper and lower age limit that currently provides for children aged 9 to 13 years as a Middle School to become a Secondary School with effect from September 2015, eventually accommodating children aged 11 to 16 years.

The proposal has followed the legal process required in education law including statutory consultation, the outcome of which is outlined in this report. The Council's Executive is now required to determine the proposal.

The school is subject of a separate proposal made by the Council to close the school as a result of its decreasing viability with falling pupil numbers and a corresponding reduction in funding from 2014/15. That proposal has been subject to an initial phase of public consultation, the outcome of which is being reported to the Council's Executive on the 27 May 2014, with recommendations to progress, subject to the outcome of Executive's determination of the school's proposal set out in this report.

Advising Officer: Edwina Grant, Deputy Chief Executive/ Director of Children's Services

Contact Officer: Helen Redding, Assistant Director School Improvement

Public/Exempt: Public

Wards Affected: Dunstable Central, Dunstable Icknield, Dunstable Manshead, Dunstable Northfields, Dunstable Watling, Caddington

Function of: Executive

Key Decision Yes

CORPORATE IMPLICATIONS

Council Priorities:

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.

Financial:

1. The day to day running costs of school provision is met through revenue funding which is made available to each school as part of the Dedicated Schools Grant (DSG) and is based primarily on the numbers of pupils attending. There are financial implications for the school already identified within the report made to Council's Executive on 4 February 2014 as a result of falling pupil numbers with regard to its budget for 2014/2015 and beyond.
2. This reduction represents a decrease of £630k (29.8%) in the school's budget in 2014/15, compared with 2013/14. The implementation of the school's proposed change in age range would have further revenue implications as outlined in the report.

Legal:

3. Section 14 of the Education Act 1996 places a duty on Councils to secure sufficient and suitable school places to provide for 5 – 16 year old statutory aged children in its area. The Education and Inspections Act 2006 gives Councils a strategic role as commissioners, but not providers, of school places to promote parental choice, diversity, high standards, the fulfilment of every child's educational potential and fair access to educational opportunity.
4. The main legislation governing school organisation proposals of the nature set out in this report is found in the School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2013 which came into force on 28 January 2014, replacing 2007 regulations of the same name. The Department for Education (DfE) has published guidance to provide additional information on the procedures established by the new regulations. Following a number of amendments, this new guidance was published in final form on 21 February 2014. Governing Bodies, Councils and the Schools Adjudicator must have regard to this guidance when exercising functions under the new regulations.
5. As a Voluntary School, the Governing Body of Ashton Middle School is able to propose the alteration of its upper and lower age limit by following a statutory process. The Council is decision maker and must determine the proposal within 2 months of the end of the representation period represented by Stage 2 in the process as set out later in this report.

6. The local Church of England (C of E) Diocese of St Albans, the Bishop of the local Roman Catholic Diocese of Northampton and the governing body and trustees of Ashton C of E Voluntary Aided (VA) Middle school have a right to appeal within 4 weeks of the determination to the schools adjudicator if they disagree with the Council's final decision. There is no right of appeal on determinations made by the Schools Adjudicator.
7. The statutory process for making significant changes to schools has 4 stages:
 1. Publication of Statutory notice
 2. Representation period – Period of 4 weeks to enable people and organisations to express their views about the proposals and ensure that they will be taken into account by the Decision Maker.
 3. Decision – The Council's Executive determination of the proposal, within 2 months of the end of the representation period, otherwise it will fall to the Schools Adjudicator.
 4. Implementation – Putting into effect of the proposed closure.
8. The former school organisation regulations required a pre-publication consultation period to be undertaken for proposed significant changes. Although this is no longer a requirement the DfE guidance expresses a strong expectation of Schools and Councils to consult interested parties in developing their proposals prior to Stage 1 as set out above, as part of their duty under public law to act rationally and take into account all relevant considerations. DfE guidance also sets out the minimum information that must be contained within a statutory proposal to enable interested parties to make a decision on whether to support or challenge the proposed change.
9. As a Voluntary Aided school the Governing Body of Ashton Middle School must also ensure that they have the consent of the site's trustees, the Ashton Foundation, and the St Albans C of E Diocesan Board of Education.
10. The DfE guidance for decision makers contains a number of key factors to be considered when a final decision is made on school organisation proposals, represented by Stage 3 in the process as set out above. Decision makers determining proposals to make prescribed alterations must consider these factors and all of 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.

11. The factors outlined in statutory guidance for school organisation proposals to make prescribed alterations include:

Consideration of consultation and representation period
Education standards and diversity of provision
Demand
School size
Proposed admission arrangements
National curriculum
Equal opportunity issues
Community cohesion
Travel and accessibility
Capital
School premises and playing fields.

12. When issuing a decision, the decision maker can:

- Reject the proposal.
- Approve the proposal without modification.
- Approve the proposal with modifications, having consulted the governing body.
- Approve the proposal, subject to certain conditions.

Risk Management:

13. The proposal to change the age range of Ashton Middle School has implications for the Council, given its aim of improving educational attainment, particularly at Key Stage 4, its legal obligation to determine the outcome of the statutory process, its responsibility to consider the supply of school places in the Dunstable area and its monitoring of the financial viability of schools, the impact that can have on the education of children accommodated within them and the need to take positive action where required.

14. Key risks associated with taking no action include:

Failure to discharge the Council's legal and statutory duties/guidance.
Failure to deliver the Council's strategic priorities.
Reputational risks associated with the ineffective management of school places.
The potential for the inefficient use of dedicated schools grant and the financial and educational unviability of the proposed school.

Staffing (including Trades Unions):

15. Staff and Trades Unions have been consulted by the school as part of the process required by regulations and DfE guidance.
16. The School will have the support of their commissioned HR Provider where the proposal requires changes in school staff structures or to terms and conditions of employment. The Council's Schools Statutory HR Team will monitor restructures to ensure redundancy charges to the Council are minimised and justified.

17. Irrespective of the proposal set out in this report and as a result of the significant budget reduction that will impact the school as a consequence of the reducing numbers of pupils at the school from September 2014, it has been advised to seek advice from its Human Resources (HR) Provider regarding any restructuring of staffing.

Equalities/Human Rights:

18. The consultation and decision making process set out in regulation for proposals to make prescribed alterations to Council maintained schools requires an evaluation on a project by project basis of any equalities and human rights issues that might arise.
19. 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.
20. This statutory duty includes requirements to:
- Remove or minimise disadvantages suffered by people due to their protected characteristics.
 - Take steps to meet the needs of people from protected groups where these are different from the needs of other people.
 - Encourage people from protected groups to participate in public life or in other activities where their participation is disproportionately low.
21. The Governing Body of Ashton Middle School has considered that there are no race or disability discrimination issues that arise from the change in age range being proposed.

Public Health:

22. The range of extended services that may be provided in schools includes:
- Parenting and family support officers.
 - Transition support for pupils, schools and families.
 - Combined clubs and after school activities.
 - Holiday activities.
 - Support for vulnerable pupils and families.

The report sets out the range of services currently provided by the school.

Community Safety:

23. Schools have an important role under Section 17 of the Crime and Disorder Act 1998 to work alongside a range of other agencies to ensure safety in their local communities.

Sustainability:

24. Whilst there may be additional costs in order to meet sustainability objectives for new build and/or other significant capital projects on existing schools these measures contribute to reduced running costs through better energy and resource efficiency, alongside creating a better learning environment for the pupils. The school's Governing Body have not identified any significant capital investment required to implement the proposal set out in this report.

Procurement:

25. Not applicable.

Overview and Scrutiny:

26. The representation period of the statutory proposal published by the Governing Body of Ashton Middle School concluded on Monday 14 April 2014 and the deadline for the submission of final reports to the 7 May 2014 meeting of Children's Services Overview & Scrutiny Committee was 22 April 2014.

This did not allow sufficient time for –

- Ashton's Governing Body to meet and make their decision regarding whether they wish to progress with the proposal;
 - Ashton's Governing Body to submit a report to the Council to support their proposal (presuming they decided to proceed at that point); or
 - the report to be considered by officers, any missing information to be requested from the Governing Body and the report to Executive to be written and submitted.
27. On the basis of the information identified in paragraph 26, it was agreed to manage the determination of the proposal of Ashton Middle School with a report directly to Executive on the 27 May 2014. This report will therefore be an agenda item considered before the report on the closure proposals is considered.
28. This report has not therefore been subject of prior consideration by the Children's Services Overview and Scrutiny Committee.

RECOMMENDATIONS:**The Executive is asked to:**

1. i. **confirm that the procedures established by The Education and Inspections Act 2006 (EIA 2006) and The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013, have been complied with in bringing forward the proposal to change the age range of Ashton C of E VA Middle School as outlined in this report and in the school's consultation document as attached at Appendix A to this report;**

<p>ii.</p> <p>iii.</p> <p>2.</p>	<p>confirm receipt of the representation on the 8 April 2014 attached at Appendix C in respect of the proposal to make a prescribed alteration to change the age range of Ashton C of E VA Middle School and the statutory notice as set out in Appendix B, issued on the 17 March 2014 under Section 19(3), of the Education and Inspections Act 2006; and</p> <p>confirm receipt of the business case dated 4 April 2014 attached at Appendix D submitted by the Governing Body of Ashton C of E VA Middle School outlining its support and rationale for the proposal to change the age range of Ashton C of E VA Middle School as outlined in this report.</p> <p>consider the statutory proposal (Appendix B) published by the Governing Body of Ashton C of E VA Middle School on 17 March 2014, to change the age range of Ashton C of E VA Middle School, the linked Prescribed Alterations (Appendix A) and the current business case (Appendix D), and reject the statutory proposal for the reasons set out in paragraph 76 of this report.</p>
<p><i>Reason for Recommendations:</i></p>	<p><i>To ensure the Council meets its statutory obligations as set out in the School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2013, to determine the proposal made by the Governing Body of Ashton CofE VA Middle School of a prescribed alteration to change the school's age range. The Council's Executive is required to make its decision within 2 months of the end of the representation period which concluded on the 14 April 2014.</i></p>

Executive Summary

29. This report outlines the proposal made by the Governing Body of Ashton CofE VA Middle School, the process that it has followed and the responses it has received from interested parties to the consultation undertaken by the school. The report sets out an evaluation of the proposal, against decision makers' criterion defined by the Department for Education and concludes with a recommendation to reject the proposal.

The Governing Body's proposal

30. As reported to the Council's Executive on the 4 February 2014 officers have been holding regular meetings since September 2013 with the Headteacher, Deputy Headteacher, Governors and the Diocese to consider future options for Ashton Middle School, given the local context of a pattern of school organisation that is changing largely to a Primary/Secondary model. The school is being supported through the Council's School Intervention Strategy due to its performance. It has recently been inspected and was judged as 'Requires Improvement'.
31. In March 2013 the Governing Body of the school consulted with stakeholders on becoming a Primary School, but decided not to continue with this option. In January 2014 the Governing Body announced a further consultation to change age range and become a Secondary school from September 2015.

32. The initial phase of consultation, which met the requirements set out in DfE guidance, commenced on the 13 January 2014 and concluded on the 3 March 2014. The school's consultation document is attached at Appendix A, along with the school's minutes of a public meeting and its evaluation of the responses received within this initial phase of consultation.
33. The school's Governing Body considered the outcome of its initial consultation and determined to progress to the publication of a statutory notice on the 17 March 2014, inviting further representations from interested parties for a final four week period which concluded on the 14 April 2014. The Statutory Notice is attached to this report at Appendix B and was published with the information provided in Appendix A.
34. One response was received by the Council within this period, from the school's Trustees, the Ashton Schools' Foundation. The response is attached as Appendix C. Within this response the Ashton Schools' Foundation corrected the schools interpretation of the initial response that the Foundation made to the proposal on the 27 February 2014 within the first phase of its consultation. Although the Foundation was keen to stress that it neither agreed nor disagreed with the school's proposal, it pointed to the lack of any detailed business case and sufficient supporting evidence of the viability of the proposal, particularly as the school would be very small for a secondary school, with only 3 forms of entry, giving a total of 450 pupils on roll.
35. On 4 April 2014 the Council received a business case from the school, in addition to further supporting information in a format aligned with the DfE decision makers' guidance. The business case and information is attached as Appendix D.
36. On 11 April 2014 the Council forwarded the business case to the Foundation, inviting it to consider the content and reconsider its initial response.
37. The formal representation period concluded on 14 April 2014.
38. The Foundation met on the 23 April 2014 and provided a formal response on the 24 April 2014, attached at Appendix E, maintaining its formal position of 'neither agree nor disagree' with the proposal but making a number of observations to specific points within the school's business case. On 25 April 2014 the school responded to the points raised in the Foundation's response. The school's final response to its Trustees is attached as Appendix F.
39. The procedures established by The Education and Inspections Act 2006 (EIA 2006) and The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013, have been complied with in bringing forward the proposal to change the age range of Ashton CofE VA Middle School as outlined in this report.

Factors for Consideration by Decision Makers

Consideration of Consultation and Representation Period

40. The appropriate consultation and representation has been carried out by the Governing Body of the school and there is evidence that it has had regard to the responses received within Appendix A to this report and with regard to the response of its Trustees in Appendix F to this report.
41. Many of the views expressed by the school's Trustees are reflected in the following sections that provide an analysis of the proposal, against the factors that decision makers must take account of.

Education Standards and Diversity of Provision

42. There are 4 secondary schools in the Dunstable and Houghton Regis area. These are Manshead School, Queensbury Academy, All Saints Academy and Houghton Regis Academy.
43. Manshead School was inspected by Ofsted in November 2013 and was judged to 'require improvement'. A monitoring inspection visit undertaken in March 2014 found that senior leaders and governors are taking effective action to tackle the areas requiring improvement identified in the original inspection. The school will admit its first Year 7 intake in September 2014.
44. Queensbury became an Academy in September 2012 and is yet to receive a full Ofsted inspection. A monitoring visit in 2013 judged that it is making reasonable progress in raising standards for all students.
45. All Saints Academy was inspected by Ofsted in November 2013 and was judged to 'require improvement'. A Monitoring Visit undertaken in March 2014 identified that senior leaders, governors and sponsors are taking effective action to tackle the areas requiring improvement identified. The school opened as a new Academy, following the closure of the former Northfields Technology College in August 2009. As a new secondary school it admitted its first Year 7 intake in September 2013, and has made a significant transition into its new facilities and building within the past two years enabling it to embed improvements in teaching and learning.
46. Houghton Regis Academy opened in September 2012 and received DfE approval to expand and to change its age range to become a secondary school. In September 2014 the Academy will accommodate Years 7 to 10 and will then grow year on year eventually to provide for children aged 11 to 18. It is yet to be inspected by Ofsted.

47. Overall standards at Key Stage 4 in schools in the Dunstable and Houghton Regis area are in need of improvement. However, the ability of Ashton Middle School to make the transition to Secondary and provide a suitably broad curriculum, raising standards and narrowing attainment gaps is not sufficiently backed by evidence. The school was inspected in December 2013 and was judged to 'require improvement'. A Monitoring Visit is due imminently. The school's business case leaves significant questions unanswered, particularly in terms of the school's financial forecasts and the essential curriculum and resource planning at Key Stage 4.

Demand

48. The report to the Council's Executive on the 4 February 2014 set out data on the supply of places and the size of current cohorts of children accommodated within schools in the Dunstable and Houghton Regis area.
49. The following table illustrates the number of school places that are available across the area on the basis of changes to age ranges that have already been approved.

Year	R	1	2	3	4	5	6	7	8	9	10 **	11**
Number of places	985	985	985	985	985	1366	1366	1382	1382	802	877	877

** this includes an assumed 75 places at the University Technology College (UTC) for pupils who may wish to transfer at the end of Year 9.

50. The following table illustrates the size of each school year group cohort currently in schools and academies in the Dunstable and Houghton Regis area (May 2013 School Census data).

Year	R	1	2	3	4	5	6	7	8	9	10	11
Total number of pupils	897	822	819	793	750	675	686	648	656	610	576	663

51. The data suggests that the size of cohort seeking a place in Year 7 could increase to 750 children in September 2015. In pupil place planning terms, to allow for parental preferences while also balancing the negative impact of inefficient over supply of places across the area, this would ideally require a minimum of 840 places to be provided in each year.

52. In addition, further pupil yield is anticipated as a result of a number of housing developments in the existing urban area of Dunstable and Houghton Regis. The current over supply of places across the Primary age range will accommodate this growth but available capacity in Years 9 to 11 is at or below desired levels (i.e. +/- 5% noting that 75 places have been included as available through the University Technical College in the figures above) and the Council will be required to commission additional school places in the future (but probably not before September 2016) simply to accommodate the growth in pupil numbers that are already in the local school system.
53. In addition to housing developments in the existing urban area of Dunstable and Houghton Regis the proposed North Houghton Regis extension will require a forecast additional 9 forms of entry in new education infrastructure to be provided as part of that development.
54. The commissioning of all of these additional places will be guided by the Council's Policy Principles for Pupil Place Planning in Schools approved by the Council's Executive in February 2013. The principles ensure, among other factors, that the commissioning process provides new places where and when they are needed, by Ofsted Good or Outstanding providers reflecting the predominant pattern of school organisation in the area.
55. The proposal to create new Secondary school places by changing the age range of Ashton Middle School would not comply with the Council's principles as a result of the school's standards, proposed size and site location in relation to the new housing developments, although it is in a central location and able to maximise the use of sustainable modes of travel to and from the school site.
56. Aside from the demographic demand for further secondary places in the area it is not clear from the school's evaluation of its consultation responses of the extent of parental support and demand for the proposal secured from parents of children yet to be admitted to Ashton Middle School. It is impossible therefore to determine if there would be likely to be sustained levels of future parental demand to make the secondary proposal viable.
57. The potential for future pressure on sixth form places with higher staying on rates anticipated post 16 at Manshead School is identified by Ashton Middle School's proposal as a risk to the future supply of places for children in Year 7 to 11. The proposal alleges that Manshead's management options could include a further reduction in the school's admission number thereby reducing the supply of places to accommodate larger year groups in sixth form.
58. Young people in England who started in year 11 (or years below) in September 2013 will have to continue in education or training until at least their 18th birthday. This raising of the participation age does not mean young people must stay in school and is not a change to the legal school leaving age. Students will be able to choose from full-time education (e.g. school or college), an apprenticeship or full-time employment or volunteering, combined with part-time education or training.

59. The Council works with schools, colleges and other providers of Post 16 education and training. Where new or expanded provision is required the Council is able to seek capital funding from the DfE. The raising of the participation age does not therefore represent a further risk to the supply of Secondary places in the area.

School Size and National Curriculum

60. The size of the proposed secondary school would accommodate a total of 450 children in year groups of 90 across Years 7 to 11, without Sixth Form provision.
61. A secondary school needs enough pupils in each year group to support the full range of the curriculum, and especially to create a sufficiently broad offer at Key Stage 4 to be viable and cost effective. The Council's Policy Principles for Pupil Place Planning in Schools suggests a total minimum school size of around 900+ pupils for a single school. For schools engaged in collaborative and partnership arrangements this figure may be reduced to a minimum of 720 pupils where the schools in the federation or trust can demonstrate that a good, coherent educational offer is provided as a result of their sustainable collaborative arrangements.
62. The financial viability of the proposal carries a significant risk and assurances articulated in the school's business case and in Appendix F to this report appear to disregard the opening balance of the proposed school in 2015/16 given it closed the 2013/14 financial year with a deficit which will be further exacerbated by the reduction in current budget availability in 2014/15 as set out in paragraphs 1 and 2 of this report.
63. The school has set out a projected budget for 2015/16 based on a forecast of anticipated pupil numbers but it is insufficiently detailed and does not enable a more thorough assessment of the proposal.

Proposed Admission Arrangements

64. The proposed admission arrangements of the school would require a variation, with approval of the school's adjudicator, to remove a Year 5 transfer point from September 2015 as the admission arrangements for 2015/16 have already been determined.

Equal Opportunity Issues

65. There are no equal opportunity issues arising from the school's proposal.

Community Cohesion

66. As a faith school and member of the Ashton Schools Foundation, Ashton Middle School has provided places for parents seeking a faith based education for their child but, as is acknowledged by its Trustees, the current school has not been oversubscribed and has surplus places currently in each year group.
67. Church of England Voluntary Aided provision is available in the Dunstable and Houghton Regis area through Ashton St Peters and Thomas Whitehead primary schools, and through Manshead School.

68. For September 2014 Manshead School received 247 first preference applications for transfer into Year 9, but only 14 of these were on religious criteria. Similarly the school received 167 first preference applications for transfer into Year 7, but only 7 of these were on religious grounds.
69. The school's proposal refers to unmet demand for additional faith based secondary places in the town. Evidence of this demand has not been proven through the school's own consultation exercise and evaluation of the responses, or through the figures illustrated above in relation to Manshead School.
70. The school's buildings are part of the historical context of Dunstable and currently offer a range of extended services for its pupils who also engage with the wider community, hosting events and performances. The school's proposal does not communicate how this role would be sustained and further expanded through a change in age range.

Travel and Accessibility

71. Ashton Middle School actively engages in the promotion of sustainable transport and as a result of its central location in Dunstable is well connected to ensure that children are able to cycle, walk or utilise public transport. If it was approved as a secondary school it would need to ensure that it continued to promote sustainability through its Travel Plan and Accessibility Plan.

Capital, School Premises and Playing Fields

72. The school's proposal fails to indicate whether any analysis has been undertaken of its current facilities and those required by a secondary school of the size proposed. Likewise, it would appear that implications of shared playing field provision with Ashton St Peters Primary School, which has also expanded as it has changed age range, has not been fully considered.
73. It would be expected that a proposal of this nature would be supported by an evaluation of the school's existing accommodation schedule against a 'model' schedule developed from the relevant Building Bulletin guidance for a school of the proposed size and type.
74. The differing facility needs of delivering the Key Stage 3 and 4 curriculum, compared with those of an existing Middle School could be considerable and the decision maker and the school's Trustees would need to be satisfied that sufficient capital funding has been secured and is available, in order to approve the proposal.

Conclusion

75. The statutory proposal of the Governing Body of Ashton C of E VA Middle School has complied with the process established by regulation, as set out in DfE guidance.

76. An evaluation of the proposal against the factors set out in guidance for decision makers indicates serious weaknesses within the proposal itself and the information provided to support it. The school's Trustees, despite retaining a position of neither agreeing or disagreeing with the proposal, are also clearly concerned that a number of key areas of development and planning have not been addressed sufficiently to provide a level of confidence that the proposal is viable.
77. It is recommended for the reasons set out in this report that the Council's Executive reject the statutory proposal of the Governing Body of Ashton C of E VA Middle School, to change the age range of the school.

Appendices:

Appendix A – Ashton Middle School's consultation materials and responses

Appendix B - Statutory Notice published by Ashton CofE VA Middle School

Appendix C – Representation received from Ashton Schools Foundation

Appendix D - Business case produced by Ashton CofE VA Middle School

Appendix E – Response of Ashton Foundation to the publication of a business case by Ashton Middle School

Appendix F - Final response of Governing Body of Ashton Middle School