

## Central Bedfordshire Council

**EXECUTIVE**

7 July 2015

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### **Proposals to Amalgamate Arlesey Nursery School and Childcare Centre with Gothic Mede Academy, Arlesey and to Amalgamate the Lawns Nursery, Biggleswade with Biggleswade Academy Trust**

Report of: Cllr Mark Versallion, Executive Member for Education and Skills  
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### **Key Decision**

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#### **Purpose of this report**

1. To seek Executive approval to commence statutory consultations required for the proposal to amalgamate Arlesey Nursery School and Childcare Centre with Gothic Mede Academy, and the proposal to amalgamate The Lawns Nursery, Biggleswade with Biggleswade Academy Trust.
2. If consultations are approved, the outcome will be reported to the Council's Executive for determination on 1 December 2015. If approved the amalgamation proposals would be implemented from 1 January 2016.
3. The schools referred to within the report serves the Wards of Biggleswade North, Biggleswade South, Stotfold & Langford and Arlesey.

#### **RECOMMENDATIONS**

1. **Approve the commencement of consultation and the publication of statutory notices for the 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; and**
  - b) **close The Lawns Nursery School, 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.**

## **Children's Services Overview and Scrutiny**

4. This report was presented to Children's Services Overview and Scrutiny Committee at its meeting on the 15 June 2015 and the Committee was asked to indicate its support for the recommendations set out within the report. The views of the Committee will be reported to Executive at its meeting.

## **Early Years Education and Childcare in Central Bedfordshire**

5. There are four Local Authority maintained Nursery Schools in Central Bedfordshire. These are:
  - The Lawns Nursery School, Biggleswade
  - Westfield Nursery School, Dunstable
  - Willow Nursery School, Dunstable
  - Arlesey Nursery School and Childcare Centre, Arlesey
6. The Lawns Nursery School, Biggleswade was judged Outstanding at its last inspection in May 2013. Arlesey Nursery School and Childcare Centre, Arlesey was judged Good at its last inspection in December 2013.
7. At the beginning of the spring term 2015 Arlesey Nursery School and Childcare Centre accommodated 91 children, aged 2 to 3 years old when they were admitted to the school. Extended care is provided at the beginning and end of the school day by the Childcare Centre which shares the school site and is managed by the school but is registered separately to the Nursery to provide childcare for 2 year olds. The Childcare Centre was judged as 'Good' by Ofsted at its last inspection by Ofsted in December 2012.
8. At the beginning of the spring term 2015 The Lawns Nursery School and Childcare Centre accommodated 144 children, aged 2 to 4 years old when they were admitted to the school. The Lawns Nursery also currently manages Biggleswade's children's centre (The Lawns Early Excellence Centre) which shares the school site but is registered separately to the Nursery and provides childcare for 2 year old children. The children's centre was judged as 'Good' by Ofsted at its last inspection by Ofsted in June 2013.
9. In addition, The Lawns Nursery School also hosts children from the Early Years Foundation Stage and most pupils at Key Stage 1 from Ivel Valley Special School.
10. In addition to childcare and early years education providers from the Private, Voluntary and Independent (PVI) sector including pre-schools, nurseries and child minders, these schools add to the diverse range of high quality provision in Central Bedfordshire.

11. This diversity enables parents to choose a provider that best meets the needs of their child. The number of places made available ensures that the Local Authority complies with its statutory duties to secure sufficient early years education and childcare for working parents of 2, 3 and 4 year olds.
12. All Nursery Schools, Lower Schools, Primary Schools and PVI Providers are funded for 3 and 4 year olds through Central Bedfordshire's Early Years Single Funding Formula (EYSFF).
13. The EYSFF establishes the factors of base rate, social deprivation, quality, lump sum and rates that in addition to data on the number and age of children taking up funded places, drives the funding allocation specific to each type of setting. Maintained Nursery schools are funded via these delegated budgets and are expected to operate within this funding.
14. The Early Years School Census collects data from these settings every January at establishment and individual child level in relation to those taking up a funded or unfunded place at a PVI setting. In addition data is also collected locally in May and October each year.
15. Local Authority maintained nurseries, maintained schools and academies with nursery classes also provide data on children accessing early years and childcare through the termly statutory school census in January, May and October each year.
16. These data collections inform the allocation of Nursery Education Funding in Central Bedfordshire to each provider and inform data returns to Government.
17. Ofsted regulates and inspects providers registered on the Early Years Register and the Childcare Register. This includes PVI providers, maintained and independent schools, including academies directly responsible for provision for children from birth to the age of 3.
18. Maps showing the location of each of these maintained nurseries and the Academies with which they are proposed to amalgamate, are attached as Appendices 1 and 2 to this report.
19. The Statutory Framework for the Early Years Foundation Stage (EYFS) is the framework for the delivery of quality integrated care and education for children from birth to the 31 August following their fifth birthday. It sets the statutory standards that all early years providers must meet. This includes all maintained schools, non-maintained schools, independent schools and all providers on the Early Years Register.

20. The EYFS aims to provide:

- quality and consistency in all early years settings
- a secure foundation for all children for good progress through school and life
- partnerships between different practitioners
- partnerships between parents or carers and practitioners
- equality of opportunity for all children

### **New models of leadership and governance**

21. Many partnerships exist between early years providers and mainstream lower and primary schools, where these provisions are not managed as part of the school, to ensure educational coherence across the Foundation Stage and into Reception.
22. Central Bedfordshire's Lower and Primary Schools can now benefit from freedoms introduced by the Department for Education in January 2014 for maintained schools and academies to lower their age ranges by up to two years to provide early years education and childcare under a single school management and governance structure. Such changes can be proposed by the Governors of maintained schools without a formal process. Academies have to seek approval from the Secretary of State but do not need to submit a formal business case to the Education Funding Agency.
23. Many schools share their sites with PVI providers and a number have taken advantage of these freedoms to merge the school and PVI pre school as a means of guaranteeing financial as well as educational viability of the early years setting, also avoiding the duplication that would otherwise exist with data collections and regulatory inspection as separate settings.
24. In recent years the viability of Local Authority Maintained Nursery Schools has been challenged by changes in funding methodologies and admission arrangements for statutory aged children to mainstream schools. These changes have contributed to the reduction nationally in the number of LA maintained Nursery schools, from 520 in 1999 to only 410 currently.

### **Funding and admissions arrangements**

25. The EYFFF was introduced from April 2011 and was one of a number of early years funding reforms of the government extending the free early years entitlement for 3 and 4 year olds and ensuring that it was funded on a fair and equitable basis across both the maintained and PVI sectors.

26. The formula is now based on levels of participation and it funds actual hours of attendance, rather than the number of places available regardless of uptake which had been the previous basis of funding for maintained nurseries alone.
27. Applying the new formula was intended to release funding to be allocated on a range of additional formula factors now included in the EYSFF. Maintained nursery settings were provided with a short term protection to ease the transition over 2 years.
28. In September 2011 a revised School Admission Code came into force ensuring that every parent with a child at reception age had to be offered a full time school place in the September at the start of the reception year. This implemented one outcome of an Independent Review of the Primary Curriculum commissioned by the Government recommending that children should ideally start school in the September following their fourth birthday.
29. This change to a single September intake for 4 year old children affected all Maintained Nursery Schools who had previously had 2 intakes each year, 1 in January and 1 after Easter. These schools had previously always had a cohort in January of Reception age children born in the summer of that year. The change in admission arrangements consequently caused a reduction in the total number of children in these schools from September.

**The Lawns Nursery School, Biggleswade and Arlesey Nursery School and Childcare Centre, Arlesey**

30. In the context of these changes and with the desire to sustain current high standards but with forecasts of continuing in-year and worsening revenue deficits, both of these schools have undertaken staffing reviews and restructures to ensure operational efficiency. In the past 2 years both schools headteachers have left through retirement and resignation.
31. The Governing Body of Arlesey Nursery School is now supported by the headteacher and other staff of Gothic Mede Academy, a member of the Bedfordshire East Multi Academy Trust and of Bedfordshire East Schools Trust. This followed a request by the Governing Body of the Nursery and an offer of support by the Academy.
32. Likewise the Governing Body of The Lawns Nursery School has been supported by the Principal of Biggleswade Academy Trust following a formal approach to the Academy by the Nursery to develop a strategic partnership.

33. Gothic Mede School was judged as Good by Ofsted in June 2011 and has been found to have sustained that performance in an interim inspection in March 2014 following academy conversion to the Bedfordshire East Multi Academy Trust.
34. Bedfordshire East Multi Academy Trust and Bedfordshire East Schools Trust are partnerships of 9 schools in the Samuel Whitbread Academy pyramid that through the registered early years and childcare provider Bedfordshire East Schools Trust (BEST) Nurseries Ltd also provide early years education and childcare on a number of school sites and community settings.
35. The Trust currently manages the BEST Nursery at Samuel Whitbread Academy which was judged by Ofsted as Outstanding in 2012 and currently has 135 children on roll aged 4 months to 5 years and a further 90 children aged from 5-12 years of age that attend the holiday play scheme and the wrap around care facility. The nursery is open from 7.30am to 6pm 5 days a week, 51 weeks per year.
36. The company also now provides wrap around care at Langford Lower School, Langford, which is registered for 24 places and was judged by Ofsted as 'Outstanding' in May 2014, and an additional community pre-school setting held at the Methodist Church Hall, Shefford, Bedfordshire which is registered for 32 places and was judged by Ofsted as 'Good' in July 2014.
37. Biggleswade Academy Trust is formed of the predecessor schools of Holmemead Middle School which converted as an Academy in March 2012 and Southlands Lower School which joined the Trust as an Academy in March 2013.
38. Since September 2013, Biggleswade Academy Trust has provided education and wrap-around care for children aged 2 to 13 following a merger with Brigham Pre-School located on the school site. The academy provides a daily breakfast and after-school club which operates for 51 weeks of the year. The Pre-school was inspected by Ofsted in September 2013 and was judged to be outstanding, whilst the early years provision was included in the most recent Ofsted inspection of the Academy in December 2014 which judged the Academy as 'Good'.
39. The Governing Bodies of each nursery school have also been supported by the Council to consider options for their continued viability and sustain these valuable settings in areas of significant demographic growth, but recognising that they are no longer viable as separate schools.
40. These options have included collaboration with another school, federation with another school, or the potential for each school to close with a new provider commissioned by the Local Authority.

41. As a result of the appraisal of options available to them, both Governing Bodies has concluded and each supports proposals to amalgamate with the Academies with whom they are now working. These proposals are also supported by the Governing Bodies of the Academies.

### **Amalgamation proposals**

42. The legal mechanism by which to achieve the proposed amalgamations requires the closing of the nursery schools and the extension of the age range of the Academies, or expansion in the case of Biggleswade Academy Trust which has already lowered its age range to combine with Brigham Nursery which had previously existed as a separate setting on the Academy's site in Biggleswade.
43. The Local Authority is able to propose the closure of the maintained nurseries and to undertake statutory consultations required by the Department for Education (DfE). The Local Authority is also able to determine the outcome of the proposals to close these schools.
44. Each Academy is also required by DfE Guidance to undertake consultation and to seek the Secretary of State's consent to the proposed change in their age range and expansion.
45. To ensure absolute clarity on the proposals and to avoid any confusion with stakeholders and other interested parties, the consultations required to be undertaken by the Local Authority and by the Academies will be combined, along with consultations required by the Transfer of Undertaking, Protection of Employment (TUPE) regulations with affected staff.
46. If approved, these proposals would secure the places and services for the local community and for the Local Authority. They would enable further efficiencies to be achieved by consolidating Governance, regulatory and data collection arrangements and it would provide financial efficiencies and greater flexibility in the use of resources.
47. In each location, the 2 establishments already share a Headteacher and the proposed amalgamations would therefore be largely administrative in nature.
48. The Local Authority staff currently employed within each school would be TUPE transferred to the successor school or provider and the Nursery buildings and assets would be transferred to each Academy under an Academy lease arrangement, retained for early years education and childcare. Existing contracts would be novated to each Academy.

49. These proposals have been subject to financial due diligence exercises by each Academy, supported by their own and each Nursery Schools' Human Resources and Financial advisors. The Council has worked closely with schools and Academies to bring these proposals forward.

### **Reasons for decision**

50. The recommended consultations on the proposals to close Arlesey Nursery School and Childcare Centre and The Lawns Nursery School, 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.
51. If approved, the consultations will commence in September and conclude in November with a final report to Executive on the 1 December 2015 and a proposed implementation date of 1 January 2016 at which point all legal and financial obligations of the former school and of the Local Authority will transfer to the relevant Academy.

### **Council Priorities**

52. 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**

53. 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).
54. 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.
55. New Department for Education Guidance for proposers and decision makers regarding school organisation in maintained schools was published in January 2014 to support the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013.
56. This Guidance can be viewed at:  
<https://www.gov.uk/government/publications/school-organisation-maintained-schools>



57. 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
58. 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.
59. 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 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.
60. 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.
61. 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

62. 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.
63. 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.
64. 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.
65. The Council will need to be satisfied that the appropriate consultation and representation period has been carried out and that the proposer has had regard to the responses received. Also that the statutory requirements have been met.
66. 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.
67. 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.
68. Annex B to that Guidance provides further information on the list of factors mentioned above, which must be taken into account.

69. 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.
70. 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.
71. 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.
72. Once proposals have been implemented, the Local Authority must inform the Secretary of State.
73. 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>.
74. The process, which is overseen by the Education Funding Agency on behalf of the DfE requires an Academy to undertake consultation and to obtain consent of the Secretary of State before implementation.

### **Financial Implications**

75. There are no capital implications for the Council arising as a result of the proposals set out in this report.
76. 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.
77. Central Bedfordshire's School Finance Regulations 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).
78. 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.

79. 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 in December 2015 approval will also be sought to allocate dedicated schools grant to the same value as any surplus that exists at the point of closure, to the successor Academies.
80. 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 a standard Academy lease which will retain the buildings for their current use but also transfer repair and maintenance obligations to the Academy Trusts.

### **Equalities Implications**

81. 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.
82. 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.
83. 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.
84. 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 race or disability discrimination issues that arise from the change being proposed.

### **Risk Management**

85. 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.

86. 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)**

87. 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.

88. Each School and Academy will continue to have the support of their commissioned HR Providers where any proposals require changes in school staff structures or to terms and conditions of employment. The Council's Schools Statutory HR Team will lead TUPE consultations.

### **Appendices**

The following Appendices are attached

Appendix 1 – Map showing location of Arlesey Nursery & Gothic Mede Academy

Appendix 2 – Map showing location of The Lawns & Biggleswade Academy Trust