

Central Bedfordshire Council

Delegated Decision Meeting
Executive Member for Families, Education and Children

20 March 2019

Determination of the Proposal to Change the Designation of Church End Lower School, Marston Moretaine from a Foundation School to a Church of England Voluntary Controlled School

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This report relates to a non key decision

Purpose of this report

1. To report to the Executive Member for Families, Education and Children the approval given by the Department for Education for a statutory consultation to be carried out for the proposed change of designation and the responses received during this consultation.
2. To approve the change of designation for Church End Lower School, Marston Moretaine from a Foundation School to a Church of England Voluntary Controlled.

RECOMMENDATIONS

The Executive Member for Families, Education and Children, is asked to approve a change of designation for Church End Lower School , Marston Moretaine from a Foundation School to a Church of England Voluntary Controlled School, as part of the Diocese of St Albans Board of Education, with an estimated implementation date of 1 May 2019.

Background

3. At their meeting on 12 June 2018 the Executive were asked to –
 - note the favourable responses to the preliminary consultation carried out by the school and support the application from Church End Lower School to the Department for Education (DfE) for the consideration of a change of designation from a Foundation school to a Voluntary Controlled school

- subject to approval by the DfE, to support the statutory process to be carried out by the school, which would require publication of a statutory notice followed by formal consultation of at least four weeks; and
 - approve that determination for the proposed change of designation be made by the Executive Member for Families, Education and Children, if responses to the formal consultation are favourable. If responses to the formal consultation are not favourable, determination to be made by the Executive.
4. Approval was given by the Executive, and the Governing Body of Church End Lower School subsequently submitted a Section 10 application to the Department of Education (DfE), complete with the support of the Council, requesting consideration of the proposal and approval to commence a statutory consultation.
 5. As Members were advised at the meeting on 12 June 2018, the DfE currently expects and promotes that changes to schools are in the form of academy conversions. The Governing Body of Church End Lower School considered this option and agreed that there was no significant demand for the school to seek academy status from any stakeholder group. The school had met with academy headteachers and governors and concluded that becoming an academy was not right for the school at this stage.
 6. For the school to change designation it is required to close and then open the following day with the new designation. Church End Lower School would therefore close and a new school, which is proposed to be established by the Diocese of St Albans Board of Education, would open on the following day with the new designation.
 7. Church End Lower School became a dual site school in September 2014 when the new Forest End site, in Great Linns, Marston Moretaine, was opened under the Council's New School Places Programme.
 8. It is proposed that the new school would open on both the Church Walk site and the Forest End site and would be named Marston Moreteyne Church of England Voluntary Controlled School.
 9. The Governing Body and Diocese originally indicated a preference for the closure of Church End Lower School and the opening of the new school to happen on 30 December 2018 and 1 January 2019 respectively. The delay has been caused by the amount of information that has been requested by the DfE from both the school and the Diocese, following the submission of the Section 10 application, believed to be because of the rarity of this type of request.

10. If the proposal is approved and implemented, the school will cease to be a Foundation school, with the staff employed by the Governing Body, and will become a Voluntary Controlled School, with the staff employed by the Council. The school building and school playing fields will transfer from the Governing Body to the Diocese of St Albans. The school will remain as a maintained school and Religious Education will continue to follow the Local Authority Agreed Syllabus.
11. Pupils on roll at Church End Lower will transfer to the new school and the Admissions Policy for the new school will be the same as that for Church End Lower.
12. Council approval for the proposal would enable the Governing Body and the Diocese of St Albans to apply to the DfE for the final permission for the change of designation.
13. The DfE's process for the change of designation can be viewed at: <https://www.gov.uk/guidance/religious-character-designation-guide-to-applying>.

Consultation responses

14. Church End Lower School launched a preliminary consultation in October 2017, which included 4 public meetings, to gauge the level of support for the proposal.
15. A total of 86 responses were received; 78 supported the proposal, 6 neither supported or opposed it and 2 opposed it. Those in support of the proposal felt that it would be a 'positive step for the school and the children' and that 'the school should not academise'. The minority that objected to the proposed change stated that they did not believe in church schools and preferred the school to remain as a foundation school.
16. The statutory consultation, launched by the school and the Diocese, ran from 10 January to 20 February 2019.
17. It received 1 response, which expressed support for the consultation.
18. As a result of the level of support demonstrated during both the preliminary and statutory consultation, the Governing Body of Church End Lower School and the Education Board of the Diocese of St Albans have requested that the proposed change of designation, which is to be achieved via the closure of Church End Lower School and the opening of the Marston Moreteyne Church of England Voluntary Controlled School, be approved by the Council.

Reasons for decision

19. Church End Lower School is an Ofsted 'good' school and remains popular with parents and carers both within its catchment area and beyond.
20. The school governors have been working towards this proposed change since 2011 and have weighed the benefits of the change of designation against academisation.
21. The pupil yield from the new housing developments within the area is likely to increase demand for school places and this need is unlikely to change over the next 5 years.
22. The Executive gave their support for the change of designation at their meeting on 12 June 2018 (minute E/18/10) and the DfE, via the Secretary of State, gave consent for the statutory consultation to be actioned.

Council Priorities

23. The report supports the following Council priority:-
 - Improving Education and Skills.

Legal Implications

24. It is not possible for an existing school to make any change to its religious character. Either the local authority or the governing body must publish a proposal, via a statutory notice, to close the existing school and a faith organisation, as proposer, must issue a 'related' proposal, via a statutory notice, to establish a new voluntary school with a religious character. This can be done by either gaining the Secretary of State's consent under Section 10 or as a special case under Section 11 of the EIA 2006.
25. 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 200713 and the School Organisation (Prescribed Alterations to Mainstream Schools) (England) Regulations 200713.
26. DfE regulations and guidance outline the requirements and process for proposals to change the designation of a Council maintained schools. These include full public consultation, the publication of statutory proposals and the decision-making process. The Council and the DfE are the decision makers for a proposal relating to a change of designation for a maintained school, which is set out in this report.

27. All decisions on proposals to either open or close a maintained school must be based on the factors as set out within the guidance for 'Opening and closing maintained schools'.
28. The DfE guidance for the 'Opening and closing maintained schools' can be viewed at: <https://www.gov.uk/government/publications/school-organisation-maintained-schools>.
29. At the meeting of the Executive on 12 June 2018 it was agreed that the Executive Member for Families, Education and Children be authorised to determine the change of designation for the school, subject to responses to the statutory consultation being favourable. If responses were not favourable, then determination was to be made by the Executive.
30. Only 1 response was received during the statutory consultation in favour of the proposed change of designation. Determination of the proposal is therefore requested from the Executive Member for Families, Education and Children.
31. As decision maker the Executive Member must be satisfied that the proposal has followed due process and must also have regards to statutory guidance.
32. The decision must be taken in accordance with the provisions of paragraph 19 of the Access to Information Procedure Rules (Part 4F of the Constitution).
33. As decision maker for the statutory proposal reflected in this report the Executive Member must determine whether to:-
 - Reject the proposal
 - Approve the proposal
 - Approve the proposal with a modification (e.g. the implementation date)
 - Approve the proposal subject to them meeting a certain condition.
34. In any case the proposal must be determined within two months of the close of the representation period, otherwise the proposal will be referred to the Schools Adjudicator. (The representation period/statutory consultation ended on 20 February 2019).

Financial Implications

35. If the change of designation is actioned, and the new school is to be opened, the staff will need to be transferred from the employ of the Governing Body of Church End Lower School to the employ of the Council. This will need to be managed in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended 2014).

36. This process will need to be managed by the Governing Body of the School (the Transferor) and the Council (the Transee) and supported by each organisation's HR provider.
37. The new school will continue to receive payroll and HR provision from external providers.
38. As a Maintained Voluntary Controlled School, any reductions in staffing would be managed in accordance with the Council's Redundancy Policy for Schools (as adopted by the Governing Body of the school).
39. Redundancy payments for Maintained Voluntary Controlled Schools are calculated based on actual weekly pay as opposed to calculated in accordance with statutory maximum weekly pay for Foundation Schools, therefore a change of designation would result in an increase in redundancy liability cost to the Council should staffing reductions be required after a change of designation.
40. Any dismissal made by the school (for redundancy or other reasons) would be a dismissal from the Council as the employer and therefore has the same associated employer risk as all Central Bedfordshire Council Maintained Community and Voluntary Controlled Schools.
41. There would be no additional pension costs arising from a change of designation as the new school would be maintained by the Council and the employees would remain eligible to contribute to the LGPS and Teachers Pension Schemes. The Council would continue to be responsible for the monthly return of Teachers Pension service.
42. The day to day running costs of the school are met through revenue funding which is made available to each school as part of the dedicated schools grant, calculated on a per pupil basis. Nationally, school and academy revenue budgets are set in line with the School and Early Years Finance Regulations 2013 which uses October school census data of pupil numbers accommodated at that moment in time to calculate the budget for the following financial year, for Council maintained schools, and the following academic year for Academies.
43. If the proposal is determined in favour of the change of designation, and the DfE subsequently also gives its approval, the school building and school playing fields will transfer from the Governing Body to the Diocese of St Albans

Equalities Implications

44. The consultation and decision-making process set out in regulation for proposals to maintained schools requires an evaluation on a project by project basis of any equalities and human rights issues that might arise.

45. 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.
46. 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.
47. The proposed change of designation for Church End Lower School is not envisaged to have an adverse impact on any of the listed groups below:-

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|---|-----|
| Sex | N/A |
| Gender Reassignment | N/A |
| Age | N/A |
| Disability | N/A |
| Race & Ethnicity | N/A |
| Sexual Orientation | N/A |
| Religion or Belief (or No Belief) | N/A |
| Pregnancy & Maternity | N/A |
| Human Rights (Please see articles in toolkit) | N/A |
| Other Groups (rural isolation etc) | N/A |

Risk Management

48. The proposal set out in this report has been developed and evaluated against the key criteria for decision makers that are outlined in guidance. Likewise, the proposal has followed the procedures set out in regulation. This mitigates the risk on the Council of failing to comply with the relevant statutory requirements.
49. The key risks mitigated by the process that has been followed 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 school places.

- Financial risks, including significant capital commitment to the Council, and the consequential additional running costs that will be borne by the schools.
50. If approved, the Governing Body of Church End Lower School and the Education Board of the Diocese of St Albans will develop and implement change management plans that will include risk assessment and management criteria to ensure the effective delivery of the objective set out in the proposal document.

Conclusion and next Steps

51. The recommendation is for the Executive Member for Families, Education and Children, to determine the proposal through delegated authority as approved at the Council's Executive.
52. If determined this will enable the schools to work towards the implementation of this change from 1 May 2019.

Appendices

53. Appendix A - Statutory document – Related proposals to close Church End Lower School, Marston Moretaine and open Marston Moreteyne Church of England VC School – published 20 January 2019

Background Papers

None