

<b>Cabinet</b>  25 November 2020	 <b>TOWER HAMLETS</b>
<b>Report of:</b> James Thomas, Corporate Director, Children's and Culture	<b>Classification:</b> Unrestricted
<b>Planning for School Places 2020/21 Annual Update</b>	

<b>Lead Member</b>	Councillor Danny Hassell, Cabinet Member for Cabinet Member for Children's and Culture Services
<b>Originating Officer(s)</b>	Terry Bryan, Service Head (Pupil Services and School Sufficiency), Ikwi Mkpuru, School Organisation and Place Planning Manager
<b>Wards affected</b>	All wards
<b>Key Decision?</b>	Yes
<b>Forward Plan Notice Published</b>	04/08/2020
<b>Reason for Key Decision</b>	To be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority.
<b>Strategic Plan Priority / Outcome</b>	Children and young people are protected so they get the best start in life and can realise their potential

### Executive Summary

This report is the annual review of planning for school places. It updates cabinet on: the latest position with projected demand; actions being taken to reduce the numbers of primary school places in areas of surplus; plans to increase places in areas of current or projected increased demand; and the options to be considered for future school development sites.

### Recommendations:

- A. This report summarises the list of activities the Council is undertaking or planning, through earlier cabinet decisions or cabinet decisions to be taken in future, to manage the supply of school places. The Mayor in cabinet is therefore recommended to NOTE the following:
1. the position on the current and projected demand for school places.
  2. the progress made in relation to:
    - the actions being taken to rationalise the primary school provision in the west of the borough where there is surplus;
    - the plans and options for future school developments to meet the

anticipated need for additional primary places in the east of the borough, including the expansion of existing schools and the development of a new school at Wood Wharf on the Isle of Dogs;

- the development of the new secondary school at London Dock;
- the development of the new secondary school site at Westferry Printworks on the Isle of Dogs;
- the rebuild/refurbish George Green's Secondary School;
- the expansion of Phoenix Special School and the plan for the enlargement of Beatrice Tate Special School.

3. the specific equalities considerations as set out in Paragraph 5.

4. that this report sets out the council's plan to exercise its Education functions aligned with the functions of the council as a Local Planning Authority (LPA), and particularly concerning the approach to the current allocation of school sites in the Local Plan as adopted in January 2020. The council intends to initiate a review of the Local Plan over the course of the next year.

B. The Mayor in Cabinet is also requested to make the decision to authorise the Corporate Director - Place to enter into the development agreement and the works funding agreement and all other related agreements (including leasing heads of terms if necessary) with the Department For Education in order to access the DFE contribution for the construction of a new secondary school on the London Dock Site.

## **1 REASONS FOR THE DECISIONS**

- 1.1 The council has a statutory duty to provide and plan for sufficient school places with an appropriate mix and number of high performing, financially sustainable schools. These places must be accessible to all children in the local community and available when they are needed.
- 1.2 Proposals to provide school places often require long-term planning to implement (e.g. opening a new school). Evidence about the projected need for places must be robust and reviewed regularly, so that decisions are fully informed and can be made in good time.

## **2 ALTERNATIVE OPTIONS**

- 2.1 In cases where the council is not able to ensure new schools are established when needed, short-term measures to provide additional places in the form of bulge classes at existing schools or expansions into temporary buildings may be required. Although these measures can address capacity issues in the short-term, they do not provide best value and should not be viewed as a sustainable approach to meeting an increased demand for school places.

## **3 DETAILS OF THE REPORT**

### **Context**

- 3.1 The demand for school places is driven by population growth, migration levels and the borough's housing development. Population growth in Tower Hamlets remains amongst the fastest in the country. However, this growth is no longer translating into the anticipated levels of increased demand for school places. This is due to falling birth rates, changing resident demographics, and increased levels migration out of the borough. A similar situation is being experienced in other London boroughs. The current round of pupil projections for Tower Hamlets is provided at Appendix 1.
- 3.2 The Council has been dealing with a significant surplus of places at primary schools in some areas of the borough. The pupil census in January 2020 showed that primary schools carried a reasonable surplus of 10% across all age groups. However, in the reception year this is at 14% (536) and well above the benchmark of 5-10% for urban areas. Although some surplus is necessary to allow for parental choice, too much surplus can affect the resources available for expenditure on improving outcomes for pupils.
- 3.3 The situation with pupil place capacity is not uniform across the borough. There is a contrast between the surplus places at primary schools in the west and the increasing pressure to ensure there are enough school places in the east. Primary schools in the west are working to address the resource challenges of unfilled places, whilst the majority of schools in the east have maintained steady rolls or even seen increases in their pupil numbers. By 2026/27, the east of the borough is projected to require up to an additional 7FE or 211 places.
- 3.4 With these fluctuations in the pupil population it has been necessary for the Local Authority (LA) to plan, manage and support a series of school organisation changes and new building developments to ensure that the right numbers of school places are in the right parts of the borough at the right time. The planned approach and the progress being made is presented later in this report.
- 3.5 The pupil projections indicate that the demand for secondary school places is still increasing, if not at the rate that was projected in previous years. Demand for secondary school places is still expected to rise steadily over the next few years and peak in 2027. The earlier decision to establish at least one new secondary school at London Dock in Wapping will ensure there are enough places in the medium term and allow for any further school organisation changes. It will also enable the other development site at Westferry Printworks to be used to improve the facilities of an existing secondary school. The planned approach and progress to date is presented later in this report.

### **Pupil Projections Methodology and Approach**

- 3.6 Tower Hamlets Council commissions school roll projections through the Greater London Authority (GLA), like most other London boroughs. GLA have access to data on all pupils in London (via the National Pupil Database) which enables them to model movements across borough boundaries in a way that would be difficult for an individual authority.
- 3.7 Projections are run each year in March/April using information based on demographic trends (e.g. births, deaths, and migration); the borough's housing development trajectory; and the flow of pupils from their ward of residence (including those out of borough) to each school.
- 3.8 PAN London pupil projections are notoriously difficult to plan, given the growth experienced in recent years and all the factors contributing to current migration levels. The council uses six sets of pupil projections based on high, medium and low migration; and on a one year or four year historical reference. Historically, it considered the medium migration sets as the most reliable method as it produced a higher yield of pupil place projections consistent with the growth pattern at that time. However, recently, it was decided to change to a new model based on the high migration set, which has produced a more modest pupil growth projection in line with current trends. The council's most recent DfE return on School Capacity (SCAP) showed projections were 99.7% accurate for primary and 99.1% for secondary. This is well within the DfE's tolerances and therefore ensures confidence in the methodology and approach.
- 3.9 Within the Pan London context, Tower Hamlets is especially complex as a densely populated urban area with rapidly changing demographics and huge scale development, which increases the degrees of variability to its pupil projections work. The approach is therefore to develop and present a school place planning strategy with reasonable ambition, the necessary caution and flexibility to manage these significant challenges, as well as the expectations of the various stakeholders.

### **Primary Schools**

- 3.10 Primary place planning in Tower Hamlets is split into six planning areas referred to as school catchment areas.
- 3.11 Tower Hamlets has experienced a long run of incremental increases in the overall demand for primary school places. This peaked in 2016/17, dropped in the next three years before rising again in 2020/21, as shown in the table below. The position is likely to remain relatively stable throughout the next seven year planning period as the fall in demand in the west of the borough is counterbalanced by the rise in the east. The earlier volatility in demand has been experienced in a number of boroughs across London.

	2016/17	2017/18	2018/19	2019/20	2020/21
No. of Applications Received for Reception	3405	3305	3329	3169	3347

- 3.12 Pupil numbers in four of the six school catchment areas should remain constant throughout the planning period. The exception being Poplar and the Isle of Dogs, where increases are expected from planned housing development. As explained earlier in this report, the projections need to be viewed with caution, in part, due to the levels of child yield from these new developments being below previous estimates and the challenges for the council in providing affordable housing. It is also not yet known how the environmental impact of Covid-19 will affect place planning in urban areas.
- 3.13 In 2018, the Council commenced a review of its primary school places. The aim of the review was to identify long-term solutions to reduce the significant number of surplus places in the west of the borough, whilst ensuring that schools remained financially sustainable and able to maintain high quality education. The process of the review has enabled school leaders to find their own solutions, including amalgamation, hard federation or closure, where this was necessary to safeguard children's education.
- 3.14 The further findings from the review has identified that a number of schools face significant financial challenges due to a decline in their pupil roll. This has included some schools having to apply to the Council for a licensed deficit and, in the process, require the Council to establish whether or not a School would be able to recover to a financial position that would enable the LA to be confident of its long term viability.

**(a) Progress on Primary School Organisation Changes and Planned School Developments, including those as an outcome of the Primary Review**

- 3.15 Below is the current position within each school catchment area:

**Catchment Area 1 (Stepney)**

There are currently 720 Reception places available in Stepney. In January 2020 there were 240 (8FE) unfilled places. Action to reduce this surplus has been undertaken as follows:

<b>School organisation changes implemented/planned</b>	<b>Timescale</b>	<b>PAN Reduction</b>
Smithy School merged with Redlands to form a single Primary School, <b>Stepney Park</b> .	1 <sup>st</sup> September 2020.	Reduction of 1FE (30 places) with potential to reinstate, if required.
Guardian Angels merged with St Anne's Catholic Primary Schools to form a 2FE Catholic Primary School, <b>St Anne's and Guardian Angels RC</b> .	1 <sup>st</sup> September 2020.	Reduction of 20 places.
PAN of Cayley School reduced from 3FE to 2FE	1 <sup>st</sup> September 2020	Reduction of 1FE (30 places) with potential to reinstate if necessary.

### Catchment Area 2 (Bow)

There are currently 465 Reception places available in the Bow catchment area. In January 2020 there were few unfilled places and the demand versus supply is expected to be consistent during this planning window, with limited spare capacity.

School organisation changes implemented/planned	Timescale	PAN Reduction
Reduction to the PAN of Malmesbury School from 2½ FE to 2FE	1st September 2020	Reduction of 0.5FE (15 places) with option to reinstate with 'bulge' classes in alternate years, when required.

### Catchment Area 3 (Poplar)

There are currently 890 Reception places available in the Poplar catchment area. In January 2020, there were 38 (1FE) unfilled places; but with anticipated growth in the pupil population, this area is expected to have a shortfall of 63 (2FE) places by 2026, without intervention. The current plans to address this potential shortfall are as follows:

School organisation changes implemented/planned	Timescale	PAN Increase
Increase to the PAN of one or more of the schools in the Poplar area by at least 1/2FE	The Council is currently working on plans to ensure the additional capacity can be available from as early 2022, even if this first needs to be as temporary measure.	An increase of 2FE
Establish a new 2FE at Reuters Ltd (Blackwall Yard)	The Council is currently working with the developer on plans for the new school to be delivered by 2026/27.	An increase of 2FE
Ailsa Street Site Allocation	The Council has identified this site for a new primary school that could be delivered within the Local Plan period up to 2031.	Up to 2FE (60 places).

### Catchment Area 4 (Isle of Dogs)

There are currently 441 Reception places available in the Isle of Dogs catchment area. In January 2020 there were 39 (1FE) unfilled places. However, with anticipated growth in the pupil population, this area is expected to have a shortfall of 148 places (5FE) by 2026, without intervention. The following is planned for the Isle of Dogs:

School organisation changes implemented/planned	Timescale	Pan Increase
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New School Building at Wood Wharf.	The Council has already agreed to open this new school from as early as September 2022. Plans are now in place to appoint the new school provider.	2FE (60 places)
New School Building at 3 Millharbour.	The Council has taken up the s106 option to develop a new 2FE school. The planned timescale for the school to open is September 2025/26.	2FE (60 places)

New School Building at Crossharbour Town Centre	The Council is working with the developer to enable the potential expansion of an existing school. No timescale as yet.	Up to 2FE (60 places).
New School Building at Limeharbour (Skylines Village)	The Council has secured permission for a new school, if required. No timescale as yet.	Up to 2FE (60 places).
Marsh Wall East Site Allocation	The Council has identified this site for a new primary school that could be delivered within the Local Plan period up to 2031.	Up to 2FE (60 places).
Millharbour South Site Allocation	The Council has identified this site for a new primary school that could be delivered within the Local Plan period up to 2031.	Up to 2FE (60 places).
Proposal to merge Cubitt Town Infants and Junior to form a 3FE Primary School.	The Council has issued a statutory notice for the school's amalgamation (merger) by April 2022.	No Increase

The Council is working on the development of further new school sites in the Isle of Dogs area and will decide with developers on the precise timescales for bringing these sites forward for 2027 and beyond. These timescales will be informed and determined by the levels of child yield resulting from the planned housing developments in this area.

### Catchment Area 5 (Wapping)

There are currently 465 Reception places available in the Wapping catchment area. In January 2020 there were 63 (2FE) unfilled places and planned school organisation changes will reduce the surplus to 1FE as follows:

School organisation changes implemented	Responsible Agency and Timescale	PAN Reduction/Increase
Reduction in the PAN of Canon Barnett School from 1½FE to 1FE	1 <sup>st</sup> September 2020	Reduction of 0.5FE (15 Places)
Proposed closure of Shapla Primary School	LA undertaking statutory consultation on School closure by 2021	Reduction of 1FE (30 places)
Planned Expansion of Hermitage Primary School from 1½FE to 2FE	Feasibility being undertaken for temporary expansion by 2021 and permanent expansion by 2023.	Increase of 0.5FE (15 Places)

### Catchment Area 6 (Bethnal Green)

There are currently 630 Reception places available in the Bethnal Green catchment area. In January 2020 there were 144 (5FE) unfilled places. Previous and further planned school organisation changes will reduce this surplus to 3FE as follows, but further measures may be required:

School organisation changes implemented	Responsible Agency and Timescale	PAN Reduction
Hague and Stewart Headlam Schools have Federated, this included a reduction to the PAN at Stewart Headlam from 2FE to 1FE.	1 <sup>st</sup> January 2020	Reduction of 1FE (30 places)
Reduction to the PAN of Bangabandhu Primary School from 2FE to 1FE.	1 <sup>st</sup> September 2020	Reduction of 1FE (30 Places)
Proposed closure of St Matthias CE (1FE) Primary School.	LA and LDBS currently consulting on closure for August 2021.	Reduction of 1FE (30 places).

### Secondary Schools

#### (a) Current position and projected need

- 3.16 Secondary school places in Tower Hamlets are planned for on a borough-wide basis, as it recognises that pupils will travel to schools across (and outside) the borough, according to their particular preferences.
- 3.17 Tower Hamlets has been experiencing a gradual increase in secondary applications in line with the previous growth, with a slight dip in 2020 (as expected) as follows:

	2016/17	2017/18	2018/19	2019/20	2020/21



No of Applications Received for Year 7	2738	2878	2995	3069	2976
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3.18 The current round of projections indicates that numbers will continue to increase until 2023 before remaining at a steady level through to 2027.

**(b) Progress on Secondary School Organisation Changes and Planned School Developments.**

London Dock

3.19 In November 2018 Cabinet agreed plans to establish a new 6FE secondary school at London Dock. As with any new school, this new provision must be established as a 'Free' School and the DfE has now appointed the Mulberry Schools Trust as its preferred provider. The Trust is therefore being invited to enter into a funding agreement with the Secretary of State, enabling the DfE to make a substantial payment of £47.025m to the council, for the development of the new School building. The routes for the Council to establish new schools in its area are set out in Appendix 2.

3.20 The increased capacity provided by the new school at London Dock will ensure that there will be sufficient secondary places, following the earlier determination of school organisation proposals that resulted in the closure of Raine's Foundation School and the small expansion of Oaklands School.

Westferry Printworks

3.21 The council had previously stated its intention to develop the site at Westferry Printworks on the Isle of Dogs for a new secondary school. It then became evident that there was no longer the need for a new school to provide additional places as there were already two secondary schools on the Isle of Dogs and a third school would result in over-supply. It was therefore agreed that the Westferry Printworks Site would be used to provide improved accommodation for one of the existing Isle of Dogs secondary schools, given that both Canary Wharf College Free School and George Green's School were in need of better facilities.

3.22 Following extensive negotiations with the DfE and both schools it has been agreed that the council will enable the DfE to develop and meet the full cost (circa £50m) for delivery of the Westferry Printworks site to provide permanent accommodation for Canary Wharf College, which is currently in temporary accommodation.

George Green's School

3.23 Feasibility Plans are now underway for the council to deliver improved school buildings for George Green's from as early as September 2023, if possible.

Canary Wharf College

3.24 The DfE will be seeking to work to a similar timescale in its plans for the development of Westferry Printworks as permanent accommodation for Canary Wharf College, subject to the Developer proceeding with the school site.

- 3.25 Additional secondary school sites have been identified in the Local Plan as follows:

Billingsgate Market Site Allocation	This site is co-owned by LBTH and the City of London Corporation. No indicative timescales for delivery on the site.	No decision required. Cabinet to note current position.
Bow Common Lane Site Allocation	The Council has identified this site for a new secondary provision that could be delivered within the Local Plan period up to 2031.	No decision required. Cabinet to note current position.
Leven Road	The Council secured an option to accept a school on this site by September 2028, through a CIL in-kind agreement.	No decision required. Cabinet to note current position.

**(c) Post 16**

- 3.26 Last year it was reported that the LA was working with the Tower Hamlets Education Partnership in undertaking an assessment of Post 16 secondary school places, focusing on the sufficiency, suitability, supply and location. This was to inform discussions between the LA and schools to address identified issues and gaps. This work has not progressed further due to emerging service priorities in relation to the sustainability of SEND and Nursery School provision. The LA will establish a revised timetable for this work and will update cabinet in due course. In the meantime, some of the identified concerns in post 16 (e.g. the oversupply of places) are being addressed through the LA's work with individual schools on their school organisation and improvements to their existing accommodation.

**(d) Nursery Schools**

- 3.27 The LA's maintained nursery schools are facing significant sustainability challenges, largely due to changes in Early Years funding and funding regulations, as well as a reduction in resources elsewhere in the education system that were previously used to provide a level of subsidy.
- 3.28 The LA is working with its maintained nursery schools to develop models for their future sustainability and school organisation options are currently being developed with the individual school leaders. Any proposed changes will be presented separately to cabinet, as these are developed and determined through consultation with key stakeholders and the wider public.

**Specialist Provision (Special Schools, Resource Bases/Alternative Provision)**

**(a) Current Position**

- 3.29 Tower Hamlets has high demand for provision for children with special educational needs. In 2020, 5.1% of pupils in Tower Hamlets have an EHC Plan compared with an average of 4.2% in Inner London, 3.8% in Greater London, and 3.3% in England.
- 3.30 The proportion of pupils with EHC Plans in the borough has also risen over the past decade. In 2008, 3.3% of borough pupils had EHC Plans compared with 5.2% in 2020.

- 3.31 Earlier projections indicated that there is a potential for the numbers of pupils with EHC Plans in Tower Hamlets to increase from 2947 in 2019/20 to around 3346 in 2027 – an increase of 11.9%, requiring over 200 additional specialist places. However, a number of planned improvements in the SEND system to support the development of greater consistency in inclusive practice across all mainstream schools is expected to reduce demand over time. The LA will also be refreshing its detailed projections on the need for specialist places in the coming months in order to inform this improvement work.

### **(b) Plans to Increase Specialist Provision**

- 3.32 The LA is in the final stages of development for the new Phoenix Upper School, which will open by January 2021. This will provide up to 144 additional places for pupils in the borough with Autistic Spectrum Disorder.
- 3.33 Plans are in place to expand Beatrice Tate School on its existing site increasing its capacity from 75 to up to 130 pupils. This will ensure there will be sufficient secondary and Post 16 places for pupils with Profound and Multiple Learning Difficulties (PMLD), following the earlier expansion of the borough's primary provision at Stephen Hawking School.
- 3.34 Following a review of provision for children with Social, Emotional and Mental Health (SEMH) needs the LA is currently in the process of a public consultation on its plan to close The Cherry Trees Primary SEMH School by August 2021. Replacing this with a range of alternative inclusive provision and beginning with the development of a Specialist SEMH provision at Ben Jonson Primary School, working in alliance with Bowden House Secondary SEMH school.
- 3.35 The LA is working on plans to improve the accommodation for the London East Alternative Provision (LEAP) to ensure that pupils with ill health, behaviour issues or other difficulties have access to high quality alternative provision.
- 3.36 Provision for SEND pupils requires input from a number of agencies, the LA is therefore working in partnership with health and social care colleagues and particularly the Clinical Commissioning Group (CCG) to ensure that there is the necessary planning of services to support the increases in demand going forward. This includes providing sufficient nursing and speech and language therapy for pupils as they move in and through the various specialist provisions.

## **4. SCHOOL SITES PROVIDED THROUGH THE LOCAL PLAN**

### **Site Deliverability**

- 4.1 The Local Plan allocates a number of school sites, as presented in paragraphs 3.15 and 3.25, to meet projected need as well as improve the existing schools' estate. It provides the necessary options and flexibility required to manage risk relating to site deliverability and ensures the Council is confident it can meet its legal duty as an education provider, mainly in the medium to long term. The rationale for this is explained in Appendix 3. **School Development Funding Streams**
- 4.2 A summary of funding streams available for the development of new schools and improving the existing schools' estate is set out in Appendix 4.

## **4A LONDON DOCK SITE – DFE CONTRIBUTION**

- 4A.1 An agreement in principle has been reached with the DFE regarding a contribution of £47m towards the construction of a secondary school on the London Dock Site
- 4A.2 The funding is subject to the council agreeing to follow the DFE's self delivery process that defines the terms and condition of the contribution to ensure compliance with the DFE's legal, commercial and technical standard requirement.
- 4A.3 The DFE's self delivery process requires the council to approve a development agreement, works funding agreement and heads of terms for lease. Officers in various departments are reviewing these documents to ensure that the council's interest is protected.
- 4A.4 After the review process, the council is required to confirm the approval of the relevant agreements to the DFE before the funding is released.

## **5 EQUALITIES IMPLICATIONS**

- 5.1 Access to good quality school places is essential to raising achievement and addressing poverty and inequality in the long term. The reorganisation of school provision and the development of new schools in areas of need will have a positive impact on all groups by improving accessibility, increasing parental choice and promoting inclusive education.
- 5.2 When the council undertakes its plans to consult on changes to its school organisation, or when it works with the DfE to appoint new school providers, it will seek to ensure that the offer is universally applicable to children and young people of school age and there is no unequal impact on different groups.

## **6 OTHER STATUTORY IMPLICATIONS**

### (i) Best Value Implications

- 6.1 The report sets out proposals for meeting the need for school places. Proposals include making the best use of existing and future council assets as well as opportunities to secure maximum funding from central government.
- 6.2 Implementation of capital schemes will be subject to competitive procurement. Proposals will be subject to consultation as they are developed and before implementation.

### (ii) Environmental (including air quality)

- 6.3 The proposals to provide additional school places to meet the needs of the population will be implemented taking account of sustainable design standards and materials. The planned organisational changes to school provision is intended to ensure that children can access a local school place and so minimise impact on travel.

### (iii) Risk Management

- 6.4 The council has a statutory duty to provide sufficient school places. In order to plan to meet this need projections are obtained annually and reviewed each year against the known school capacity. It is clear that the projections indicate that a significant change in the need for places has to be planned for. There may be further variations in the projections, so the council has to retain some flexibility in its ability to respond to need.
- 6.5 The plans required to meet the need for school places can often require the balance of complex and competing considerations, for example for other social infrastructure requirements. Because of the long time that is required to implement projects, decisions need to be taken in sufficient time to plan the use of resources and to identify shortfalls.
- 6.6 The council has to manage the risk of failing to meet its statutory duties by having sufficient options available for implementation to meet need and by keeping the changing circumstances under review.

(iv) Safeguarding

- 6.7 The report deals with the Council's approach to providing school places for the local population. The supply of good quality school places contributes to the safeguarding of children by ensuring their early access to education.

(v) Data Protection / Privacy Impact Assessment

- 6.8 When implementing the plans presented in this document, the council will undertake full public consultation on the proposed school organisation changes. All comments received through these mechanisms or made directly to council officers or members will be collected to be included in the analysis of feedback received. Responses to the consultations will only be used to assess the community's view of the proposals and not for any other purpose.
- 6.9 Tower Hamlets Council will handle information in accordance with the Freedom of Information Act 2000 and the Data Protection Act 2018 and is the data controller for the purposes of the Data Protection Act 2018. For more information the privacy notice for Pupil Services can be accessed [here](#).

## **7 COMMENTS OF THE CHIEF FINANCE OFFICER**

- 7.1 Funding for the revenue implications of the schools reorganisations and growth will be managed through the Dedicated Schools Grant (DSG) and would therefore not generate any additional burden on Council resources.

The project capital costs detailed in this report for information would have been subject to prior agreement or future decision and are not for consideration as part of this report.

## **8 COMMENTS OF LEGAL SERVICES**

- 8.1 Section 14 of the Education Act 1996 places a general duty on local authorities to secure sufficient primary and secondary schools in their area. Schools will be regarded as sufficient if they are sufficient in number, character and equipment to provide for all pupils the opportunity of appropriate education. Reasonable consideration must be given to parental representations regarding the provision of schools in the Council's area. This report sets out how the Council will comply with the sufficiency duty.
- 8.2 Under section 6A of the Education and Inspections Act 2006 and government guidance, there is a presumption that any new school being set up must be an academy or a free school. There is a set process for the identifying the need for a new school. A local authority may seek proposals for a new academy and must inform the Secretary of State of the outcome who will then choose one of the proposers. A competition will be run if that process produces no suitable proposer. Accordingly, normally a local authority will only be able to publish its own proposals for a new community or local authority foundation school if all other reasonable options are exhausted. The proposal in this report for a new school to open relates to a free school.

### School closure or amalgamation and consultation

- 8.3 Under section 15 of the Education and Inspections Act 2006 ("the 2006 Act"), a Local Authority can propose the closure of all categories of maintained school. The LA must follow a statutory process to close a school, including the amalgamation of two schools. As well as the provisions in the 2006 Act, the School Organisation (Establishment and Discontinuance of Schools) Regulations 2013 must be followed and the LA must have regard to the statutory guidance "Opening and closing maintained schools."
- 8.4 The LA or governing body of the school or schools may use the pre-publication consultation to consider a range of options, however, it is not a substitute for the statutory representation period which must follow within 12 months of the initial consultation, as set out in the legislation referred to above. Consultation should be carried out at a formative stage, when responses can be taken into account in the development or taking forward of the proposals and before the final decision has been taken. Members must conscientiously take the outcome of the consultation into account in taking a decision about whether to progress to statutory publication.
- 8.5 The LA can publish a proposal to close one school and enlarge or transfer site (following the statutory process) of an existing school to accommodate displaced pupils. The process detailed in the School Organisation (Prescribed Alteration Maintained Schools) Regulations 2013 must be followed for proposals including the expansion of a school, together with separate guidance "Making significant changes ('prescribed alterations') to maintained schools".

### Employment considerations

- 8.6 A proposal for closure of a school may lead to the staff being made redundant. A dismissal for redundancy purposes is defined in section 139 of the Employment Rights Act 1996 and includes circumstances where an employee is dismissed for reasons wholly or mainly attributable to the fact that

the employer has ceased or intends to cease to carry out the business for the purposes of which the employee was employed. By section 135 of the Employment Rights Act 1996 an employee is entitled to a redundancy payment if the employer dismisses the employee by reason of redundancy. Separate consultation with staff regarding any school closure, redundancy situation or amalgamation will be required, if the proposals are taken forward. The school should follow its redundancy and redeployment process (or any adopted diocese or LA process if none is in place).

- 8.7 The impact of TUPE provisions may need to be considered later depending upon the final proposals including any decisions about amalgamation.

#### Property Considerations

- 8.8 In the event that a school is declared surplus to requirements the LA will need to secure the Secretary of State to release the site from educational use.
- 8.9 The process for securing the Secretary of State's consent is set out in Schedule 1 to the Academies Act 2010. This provides that consent is obtained prior to dispose of any community school land which includes all land in which a freehold or leasehold interest is held by the LA and which has been used for any school (including any Academy) in the last 8 years.
- 8.10 Government guidance specifies that it is important that LA's are fully aware that there should be no expectation that applications for consent will be approved, irrespective of previous decisions and should not commence any works on the site or anticipate any future proceeds of sale in anticipation of Secretary of State consent being secured.
- 8.11 Further, the disposal and/or change of use of a school site containing any open space land used as a school playing field, by a maintained school, in the last 10 years will require the consent of the Secretary of State's consent in accordance with section 77 of the Schools Standards Frameworks Act 1998. Playing field land is defined as being "land in the open air which is provided for the purposes of physical education or recreation, other than any prescribed description of land".
- 8.12 Section 77(6) of the SSFA provides that the general powers of LA's to dispose of land, for best value, contained in sections 123 of the Local Government Act Act 1972 cannot override the s77 prohibition subject to changes of use covered by general Consent Order (No5) 2014.

#### Equality considerations

- 8.13 When deciding whether or not to proceed with these decisions the Council must also have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristics and those who do not (the public sector duty). An Equality Impact Analysis must be carried out and considered in detail by Members before taking decisions to progress proposals in respect of the opening, closure or amalgamation of schools.

## DFE Funding – London Dock Site

- 8.14 The Council has the legal power to enter into an agreement with the DFE in order to receive a contribution in the manner of a grant towards the construction cost of a school at the London Dock site
- 8.15 The value of the grant from the DFE is greater than £1m. Whilst the Corporate Director – Place has the delegated authority to apply for grant funding on behalf of the Council, the value is such that this decision is a Key Decision under the law and the Council's constitution. Key decisions are reserved to the Mayor under the same law.
- 8.16 The Council is ensuring that all other agreements that relate to the use of the funds matches the DFE's requirements as set out in the relevant works funding and development agreements to ensure that the risk of withdrawal of the funding part way through the scheme is minimised.
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### **Linked Reports, Appendices and Background Documents**

#### **Linked Report**

- None

#### **Appendices**

- Appendix 1 - School roll projections and summary of methodology
- Appendix 2 - Commissioning new school places
- Appendix 3 - The Local Plan's approach to allocating school sites
- Appendix 4 - Summary of funding streams available

#### **Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012**

- List any background documents not already in the public domain including officer contact information.
- These must be sent to Democratic Services with the report
- State NONE if none.

#### **Officer contact details for documents:**

Or state N/A