

Cabinet 25 November 2020	 TOWER HAMLETS
Report of: James Thomas, Corporate Director, Children and Culture	Classification: Unrestricted
Report on the Outcome of the Preliminary Stakeholder Consultation (pre-statutory notice) on the Proposal to close The Cherry Trees Special School	

Lead Member	Councillor Danny Hassell, Cabinet Member for Cabinet Member for Children's and Culture Services
Originating Officer(s)	Terry Bryan, Service Head for Pupil Access and School Sufficiency and Ikwi Mkparu, School Organisation Manager.
Wards affected	All Wards
Key Decision?	Yes
Forward Plan Notice Published	3 rd September 2020
Reason for Key Decision	Impact on Wards
Strategic Plan Priority / Outcome	A better deal for children and young people: aspiration, education and skills

Executive Summary

Formal consultation has been carried out on the proposal to close The Cherry Trees Special School, with effect from 31st August 2021. The consultation process was carried out during the period 14th September to 19th October 2020 and a Consultation Report, which describes the findings, is attached as Appendix 1. The Report has been published on the Council website and it makes recommendation to move to the publication of a statutory notice in respect of the proposal. During the statutory notice period, legal objections can be set by any consultee, which would need to be considered before any final determination on school closure is taken.

Recommendations:

The Cabinet is recommended to:

1. Move to the publication of a statutory notice for 28 days, in respect of the proposal to close Cherry Trees School. This will take effect from 31st August 2021, with the displaced pupils admitted to other specialist provision appropriate to their needs.
2. Note the Equalities Assessment set out in Section 4 and attached as Appendix 2.

1 REASONS FOR THE DECISIONS

- 1.1 The Local Authority is seeking the cabinet's approval to issue a statutory notice proposing the closure of The Cherry Trees Special School. This follows a review of the Local Authority Special Educational Needs Strategy,

recommending moving to a different model of provision that better supports academic attainment and the inclusion of children in mainstream provision, whenever possible.

- 1.2 The statutory notice will therefore seek further views on the proposal to close Cherry Trees, placing the current students in alternate and more suitable provision.
- 1.3 The proposal is for the closure to take effect from the 31st August 2021 and the process is therefore being undertaken in accordance with Department for Education (DfE) Guidance on 'Opening and Closing Maintained Schools'. So far, an initial public consultation has been undertaken, and a report on the outcome of the consultation has been published on the Council and School website.
- 1.4 This Consultation Report, at Appendix 1, includes feedback on the representations received following the first publication of the proposals on the 14th September 2020.

2 OPTIONS AVAILABLE

- 2.1 **Option 1:** to move to the publication of a statutory notice for 28 days, which is the next stage in the statutory consultation process. This will provide further opportunity for consultees to have their say and set legal objections against the proposal.
- 2.2 **Option 2:** not to move to the publication of a statutory notice, but to cease the proposal after the formal consultation period, this would mean not concluding the full statutory consultation process in order to take the decision to close the School.
- 2.3 Option 1 is preferred as it takes the proposal to the next stage in the full statutory consultation process. It allows all consultees to fully consider the proposal for the School to close during an additional 28 day period and before the Mayor/cabinet is required to make a final determination in March of next year.

3 BACKGROUND

- 3.1 The Cherry Trees Special School, in Campbell Road, Bow, E3, is one of six special schools in Tower Hamlets. It is a local authority maintained school which provides places for up to 26 primary school age boys (currently 10 on roll) with social, emotional and mental health (SEMH) difficulties.
- 3.2 Cherry Trees has been operational since 1997 and was mostly successful over a long period. However, in recent years, the School has encountered a number of challenges, culminating in an 'inadequate' Ofsted Inspection of an education setting that is deemed no longer effective or fit for purpose.
- 3.3 The School faces various challenges, and although following the Ofsted Inspection the Local Authority has been proactively working with Cherry Trees to intervene and improve, it is now necessary to consider the option of issuing a statutory notice on a proposal for the School to close.
- 3.4 The main reasons why the School is no longer deemed effective or fit for

purpose are as follows:

- a) The school has been through a turbulent period, with interim staff being put in place by the LA to improve the quality and effectiveness of leadership in the short term;
- b) The progress and attainment of pupils does not meet the Local Authority's standards or expectations;
- c) The School does not prepare pupils well for the next stage of their education;
- d) In recent years, no pupils have been able to transition back into a mainstream school setting;
- e) The setting is no longer meeting the needs of the pupils' Education Health and Care Plans;
- f) The School site and its accommodation was not designed to meet the needs of pupils with SEMH (i.e. it was not purpose built to meet the educational needs of the cohort)
- g) The School has now become very small and is not financially viable without significant transitional protection from the Local Authority. In the current financial year, its core school budget of £734k includes £200k of subsidy. This subsidy is not sustainable and is not an effective use of resources.

3.5 The Local Authority has recently commissioned a comprehensive review of its SEMH provision and sufficiency, as part of its overarching SEND Strategy. The anticipated benefits from this review are:

- Increased SEND capacity to meet children's needs locally;
- Improved and developed inclusive practice for vulnerable learners with SEMH, which better supports their independence and re-integration;
- Better support for schools to develop provision to meet the needs of pupils with SEMH and other complex needs and also those presenting with challenging behaviour;
- Developing existing alternative provision to enable pupils to stay in their locality, reducing the distance pupils would travel to receive additional support;
- Enhanced data modelling and intuitive performance intelligence to support decision making and forecasting;
- Improved parental satisfaction of Education, Health and Care Plans;
- Improved outcomes, including attainment, for young people presenting with challenging behaviour and those with Social, Emotional and Mental Health needs.

3.6 The Tower Hamlets SEND Strategy outlines alternative provisions which would be better for children and would cost less, allowing SEND resources to be used efficiently with more effective results.

3.7 If the option to close is determined, the current pupils at The Cherry Trees School can be better accommodated at alternative specialist provisions

(using a combination of other local authority schools and out-borough settings). The Local Authority is already working with parents and providers to ensure the most suitable settings to best meet the individual needs of the pupils, in accordance with their Education, Health and Care Plans. Placing the pupils at other schools would allow for the closure of Cherry Trees whilst the Local Authority develops its future more inclusive provision. The proposal to close the School at the end of the current school year (August 2021) will allow sufficient time for the necessary school consultation and transition planning.

- 3.8 The development of the Local Authority SEND Strategy and the recommendations from the SEMH review will inform future provision and sufficiency of places for all special educational needs, social, emotional and mental health needs, of children (including pupils at Cherry Trees). This work is already creating opportunities to provide more purposeful and better quality co-educational facilities in the borough, through the soon to be established SEMH Resource Base within Ben Jonson Primary School in alliance with Bowden House Secondary SEMH school is the first of a number of long term solutions and will be in place in the borough from as early as September 2021. This new specialist facility will provide more inclusive provision which, although not a direct replacement for that provided at Cherry Trees, will extend the range of options to meet the diverse needs of vulnerable children who academically are able to access a mainstream curriculum, albeit with significant modification, support and intervention. This supports the core principles of the SEND review.
- 3.9 All decisions related to school closures must be taken by the Local Authority, following an extensive process of engagement to ensure those directly affected by the proposals are able to input into the decision making.

4 STAGE ONE CONSULTATION, FEEDBACK AND RECOMMENDATION

- 4.1 Following a formal consultation period from the 14th September to 19th October 2020, it was appropriate to publish a Consultation Report on the findings and now ask the Mayor to take a decision on whether to move to the next stage of the school organisation process, which is to publish a statutory notice (Appendix 5).
- 4.2 Due to coronavirus it was not possible to hold the preferred method of public and parents' meetings regarding the consultation. However, several alternative methods were offered (in line with the Tower Hamlets consultation processes during coronavirus guidance for schools' consultations) and these methods along with the type of responses are explained in the Consultation Report at Appendix 1.
- 4.3 The Consultation Report provides a detailed analysis of the responses and opinions expressed. Responses show that there are still a number of key concerns from all groups in relation to:
- Needing to have a better understanding of the SEND strategy and its SEMH implementation plan;
 - the quality of the planned new SEMH provision(s);
 - the transition arrangements for pupils at Cherry Trees who will be moving to new schools;

- the sufficiency of SEMH Primary provision in the Borough.
- 4.4 These concerns identify the need for more work be done with parents to help them gain a better understanding of the SEND strategy and the range of options available, including ensuring that the planned provision at Ben Jonson, supported by Bowden House, is widely communicated and discussed with the parents of the children for whom it would be appropriate.
- 4.5 Based on the feedback and whilst acknowledging the views expressed during the initial consultation, it is recommended for the Council to move to the next stage of the process by issuing a statutory notice, with the support of the School's Governing Body. This will enable a further opportunity to fully engage with stakeholders and obtain their views, before a decision can be reached.

5 EQUALITIES IMPLICATIONS

- 5.1 When making decisions the Council must act reasonably and rationally. It must consider only the relevant information and consult those affected, taking into account their views, before final decisions are made. It must also comply with its legal duties, including relating to equalities.
- 5.2 The Equality Act 2010 requires the LA, when exercising its functions, to have due regard to eliminate discrimination, harassment, victimisation; advance equality of opportunity; and to foster good relations between persons who share a relevant protected characteristic and those who do not ("the Public Sector Equality Duty").
- 5.3 An Equalities Assessment has been conducted by the LA and is attached at Appendix 2. It will continue to be updated in view of the responses to the statutory notice and its representations. This assessment must be considered in detail when the Cabinet considers the matters above, as part of its decision on whether The Cherry Trees School should close.
- 5.4 Governors and LA officers have considered carefully whether changes may affect groups disproportionately. They will continue to work with Trade Unions to ensure that planning for any staff changes are fair and equitable and in line with agreed policies, including the Council's School Organisational Change Procedure attached as Appendix 4.
- 5.5 The equalities assessment to date has not found that there is a risk that a disproportionately negative impact could exist to one or more groups of people who share a protected characteristic under the Equality Act 2010. However, the school closure would adversely impact on staff who could be subject to redundancy. The further iteration of the equalities assessment will provide additional analysis of staff data, to ensure that the risk identified can be removed or reduced through the implementation of the actions detailed within the 'Action Planning' section.

6 OTHER STATUTORY IMPLICATIONS

(i) Managing the Impact of the Proposed Closure on School Staff

- 6.1 The LA and School Governing Body is working together to support the School staff through this change. A formal staff consultation will only take place once the final decision has been made on the School's closure. If the final decision is for the School to close, staff will be supported through further training, coaching and workshops to find redeployment opportunities at other local schools.

(ii) Best Value Implications

- 6.2 The Local Authority should ensure that schools are fulfilling their duties and that value for public money is achieved, whilst standards are maintained. They must ensure that they do not fall into financial deficit so that they are unable to sustain an offer of quality education for children. This proposal is therefore being considered in view of concerns over the School's ability to improve its standards and financial viability, in order to provide high quality education for its children.
- 6.3 This proposal presents significant mainstream revenue and capital implications for the Council. When a school closes its finances (and any surplus or deficit) is returned to the LA. In the case, any deficit balance will transfer to the Council.

(iii) Environmental (including air quality)

- 6.4 There are no environmental issues arising from this proposal.

(iv) Risk Management

6.5 **School Closure Proposal**

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
Failure to move to statutory notice	H (see revenue implications below)	L	This risk is low as it will be mitigated by ensuring that a full and public statutory consultation is being undertaken, including the earlier 35 day informal consultation before moving to publication of a statutory notice for 28 days	Director of Children and Culture (Service Head for Pupil Access and School Sufficiency)

- 6.6 If this recommendation is agreed, continuation of the statutory consultation process will be carefully managed and evaluated in line with statutory guidance, taking account of the further views of stakeholders and thoroughly addressing the findings from the Equalities Assessment.
- 6.7 It is proposed to close the School for September 2021. This timescale will allow further opportunity to ensure that children, parents and staff are aware of the proposal and its implications and are supported through the change process over the course of the remainder of the current school year.

(v) Safeguarding

- 6.8 The report deals with the Council's approach to managing the supply of special school places for the local population. The efficient supply of special school places contributes to the safeguarding of children, especially those most vulnerable, by ensuring access to 'good quality' and sustainable education provision appropriate to their special educational needs.

(vi) Data Protection / Privacy Impact Assessment

- 6.9 The proposals presented in this report have followed an initial and formal public consultation using a variety of mechanisms. All responses received through these mechanisms or made directly to Council officers or members have been included in the analysis of the feedback received. These responses have only been used to assess the community's view of the proposals and not for any other purpose.
- 6.10 The Council handles 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 There would be no direct capital or revenue cost pressure to the council's general fund on the closing of the School. As a Special School Cherry trees is funded entirely from the high needs block of the dedicated schools grant (DSG) which is under significant pressure. The current size of the school means that the cost per pupil are significantly higher than at a larger school as the school overheads are being met as part of the individual pupils top up. Moving to an alternative model of a resource based linked to an existing school would significantly reduce that cost and reduce a pressure on the high needs funding block.

8 COMMENTS OF LEGAL SERVICES

- 8.1 The process for closure (discontinuance) of a maintained school is set out in Part 4 of the statutory guidance 'Opening and Closing Maintained Schools' (November 2019), in sections 15 and 16 of the Education and Inspections Act 2006 and in the School Organisation (establishment and Discontinuance of Schools) Regulation 2013.
- 8.2 This report gives information on the outcome of the pre-publication consultation, which is the first stage of the statutory process for closure of a maintained school, and sets out its proposals for the next stage, which is the publication of a statutory proposal for the discontinuance of the school.

- 8.3 When carrying out its functions a local authority must have due regard to the need to eliminate discrimination, advance equality of opportunity between those who share a relevant protected characteristic and those who do not, and foster good relations between persons who share a relevant protected characteristic and persons who do not. This duty is set out in section 149 of the Equality Act 2010 (the 'public sector equality duty'). An Equality Impact Assessment has been carried out.
- 8.4 The local authority is required under the Local Government Act 1999 to secure continuous improvement in the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
- 8.5 The matters set out in this report comply with the above legislation and guidance.
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Linked Reports, Appendices and Background Documents

Linked Report

- List any linked reports
- State NONE if none.

Appendices

- Appendix 1 Consultation Report on the Responses to the Proposal for the Closure of The Cherry Trees School
- Appendix 2 Equalities Assessment
- Appendix 3 Consultation Document on the Proposal for the closure of The Cherry Trees School
- Appendix 4 Council's HR Organisational Change Procedure
- Appendix 5 Draft Statutory Notice for the closure of The Cherry Trees School (to follow)

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

- None.

Officer contact details for documents:

N/A