

<b>Cabinet</b>  3 March 2021	 <b>TOWER HAMLETS</b>
<b>Report of:</b> James Thomas, Corporate Director, Children and Culture	<b>Classification:</b> Unrestricted
<b>Report on the outcome of the statutory consultation on the proposal to close The Cherry Trees Special School</b>	

<b>Lead Member</b>	<b>Councillor Asma Begum, Deputy Mayor for Children, Youth Services and Education</b>
<b>Originating Officer(s)</b>	Terry Bryan, Service Head (Pupil Services and School Sufficiency) Ikwi Mkparu, School Organisation and Place Planning Manager
<b>Wards affected</b>	All wards
<b>Key Decision?</b>	Yes
<b>Forward Plan Notice Published</b>	3rd December 2021
<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 informs cabinet of the outcome of the four week period of public representation in response to the statutory notice on the proposal to close The Cherry Trees Special School. It recommends for the Mayor in cabinet to consider a decision on whether or not to formally proceed with plans for the School to close on the 31<sup>st</sup> August 2021. The report includes: a summary of representations received; the council's response; officer's recommendations; and the decisions available to the Mayor in Cabinet.

## **RECOMMENDATION:**

1. Having considered the responses to statutory (public) notice at Appendix 1, the Equalities Assessment at Appendix 2 and the alternative options explored in the earlier public consultation report, it is recommended that the cabinet approves the proposal to close The Cherry Trees Special School with effect from the 31<sup>st</sup> August 2021.

### **1. REASONS FOR THE RECOMMENDATION**

- 1.1 The recommendation is made in order to determine the Council's response to representations received following the issuing of a statutory notice proposing the closure of The Cherry Trees School.
- 1.2 The closure proposal follows a period of the School's poor performance, alongside 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 with special educational needs (SEN) within mainstream provision.

### **2. ALTERNATIVE DECISIONS**

- 2.1 The Mayor could decide not to agree to the recommendation for The Cherry Trees School to close. In which case the Council would then need to decide how the School could be improved to provide high quality and cost effective specialist education, in line with current requirements.
- 2.2 The Mayor could decide to delay the decision on the School's closure until later. However, this uncertainty would adversely impact on the provision of education for the current pupils and would therefore not be in their best interests.

### **3. DETAILS OF THE REPORT**

- 3.1 The report informs cabinet of the responses to the statutory notice.
- 3.2 The Mayor in cabinet is asked to consider these responses alongside the Equalities Impact Assessment, before taking a decision on whether the council should proceed with The Cherry Trees School closure on the 31<sup>st</sup> August 2021.

### **4. INTRODUCTION**

- 4.1 Following a report to cabinet on 24<sup>th</sup> November 2020, the Mayor agreed for the council to proceed with the issuing of a statutory notice on the proposal to close The Cherry Trees Special School. The main facts on the background to this decision and current position of The Cherry Trees are set out below, with the detailed information in the earlier public consultation paper (Appendix 3) and the November cabinet report.

### **5. BACKGROUND**

- 5.1 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 providing places for up to 26 primary school age boys (currently 10 on roll) with social, emotional and mental health (SEMH) difficulties.

- 5.2 In recent years The Cherry Trees has encountered a number of challenges, culminating in an 'inadequate' Ofsted Inspection rating (Nov 2019), which deemed that its provision was no longer effective or fit for purpose. The Local Authority (LA) has since been proactively working with the School to seek to bring about its improvement. This work, alongside the development of the LA SEND Strategy and the recommendations from a recent SEMH review, has determined that the School should be replaced with alternative provisions that would be better for children and would cost less, enabling SEND resources to be used efficiently with more effective results.
- 5.3 The LA is currently planning for the first of these provisions to be in place from as early as September 2021. It will be a specialist SEMH Resource Base within Ben Jonson Primary School, working in alliance with Bowden House Secondary SEMH School. This new facility will provide more inclusive provision and also extend the range of options to meet the diverse needs of vulnerable children who are able to access a mainstream curriculum, albeit with significant modification, support and intervention. This approach is in line with the key objectives of the LA's SEND strategy.

## **6. REASON FOR THE RECOMMENDATION FOR THE CHERRY TREES SCHOOL TO CLOSE**

- 6.1 The decline in its performance and standards has had a critical impact on pupil numbers at The Cherry Trees. This small special school is now operating with pupil numbers well below its intended capacity, with only 10 of the 26 places currently filled. This has led to significant resourcing challenges with the School relying on significant subsidy from the LA in order to balance its budget. This subsidy is not sustainable and is not an effective use of the LA's limited funding resources.
- 6.2 An analysis of the current financial position of The Cherry Trees School is provided as Appendix 4. The current forecast is for a cumulative budget deficit at 1 April 2021 of 309k. This budget deficit is projected to increase year on year and reach a total of 1.8m by 2023-24.
- 6.3 In accordance with school funding regulations, a school's budget deficit must be repaid within a three-year timeframe. Where a deficit cannot be repaid it is incumbent upon the School and the Local Authority to consider options for the School's future viability, including school closure. The funding regulations also state that a deficit balance following a school closure will be the responsibility of the local authority.
- 6.5 The reason for recommending the closure of The Cherry Trees is given in consideration of:
- the School's 'inadequate' Ofsted rating;
  - the LA's emerging SEND strategy, including its now well advanced plans to establish alternative, more inclusive and cost effective SEMH provision; and
  - the School's budget deficit that will continue to increase causing a substantial risk to The Cherry Trees being able to improve in order to provide high quality specialist education.

- 6.6 Full consideration has been given to the wellbeing of the school community, including pupils, families and staff, and the support they will require if the recommendation for closure is approved. The proposed timeframe of closure in August 2021 will mean that all except seven of The Cherry's Tree pupils will have completed their primary education. For the seven pupils who remain, alternative suitable education placements are being arranged as part of a personalised pathway. This work is being undertaken by the LA's Special Educational Needs Team in full consultation with the families and over a carefully managed timescale. The LA is acutely aware of the potential impact of the proposals on the stability of these vulnerable pupils and will therefore ensure they get the support and services they need to be able to complete their school transition successfully.
- 6.7 The majority of the staff at The Cherry Trees have remained throughout the period of this closure proposal to ensure the School's good running. A decision to close the School will require them to apply for new jobs. LA officers and the School Governing Body are working together to support staff through this change and finding new positions. Details of meetings held with the staff and their unions are included below. A formal staff consultation will only take place if a decision is made to close the school.
- 6.8 An Equalities Assessment (EA) has been undertaken and is presented in the supporting documentation (Appendix 2). Although there are some groups who are considered more vulnerable the EA explains how the risks are being mitigated.

## **7. CONSULTATION**

- 7.1 The first stage of the public consultation process was undertaken from 14th September to 19th October 2020. An analysis of the responses to the first stage consultation was presented to the Mayor in cabinet on the 24<sup>th</sup> November 2020. Following the cabinet decision to issue the statutory notice, a second round of public consultation took place between the 4<sup>th</sup> December 2020 to 7<sup>th</sup> January 2021.
- 7.3 Due to coronavirus it was not possible to hold the traditional method of public and parents' meetings for both the first stage consultation and the subsequent statutory notice period. However, several alternative methods were used, in line with the Tower Hamlets guidance on public consultation processes during coronavirus. These methods along with the type of responses are explained in both the first stage consultation report (see Appendix 6).
- 7.4 Prior to the start of the consultation, the Local Authority's independent consultant held a series of preparatory meetings with The Cherry Trees School to discuss the background and process for the consultation. These included separate meetings with the head teacher and chair of governors, the governing body, the school's senior leadership team and school staff. The following formal meetings were then held as part of the consultation, to give consultees the opportunity to ask questions and make their views known:

<b>Parents of Pupils at the school</b> (including wider public)	1 to 1 meeting with Divisional Director and Head of SEN on 10 <sup>th</sup> March 2019
	1 to 1 Zoom meetings with Home School Liaison Worker on 1 <sup>st</sup> October 2020.

	Further consultation was undertaken with families as a part each individual pupil's annual review, which took place over the course of the period between April 2019 and July 2020.
<b>School Staff</b>	Meeting with staff and Trade Unions on 23 <sup>rd</sup> July 2020
	One to one and Zoom meetings on 1 <sup>st</sup> October 2020.
	Face to Face meetings with headteacher and school staff on 23 <sup>rd</sup> November 2020.
<b>Local Headteachers</b>	Meeting with Headteachers at Ben Jonson and Bowden House Schools on 2 <sup>nd</sup> December 2020.
<b>Other Local Authorities who maintains EHCP of registered pupils at the school</b>	Consultation sent on 4 <sup>th</sup> December 2020

7.5 Views expressed by pupils at meetings have been captured in the annual reviews of their Education Health and Care Plans (EHCPs). In addition, the school has worked with pupils to help them understand the closure proposal, seeking to reassure them that they would be fully supported throughout this period.

## **8. RESPONSES TO THE STATUTORY NOTICE (Second Stage Consultation)**

8.1 The statutory notice period provided a further opportunity to engage with stakeholders and obtain their views. This followed on from the earlier first stage consultation, the feedback from which was reported to the 24<sup>th</sup> November 2020 cabinet meeting and is included again with this report as Appendix 5.

8.2 One representation was received in response to the statutory notice. This was from a CEO of a local academy trust who supported the proposal for The Cherry Trees School to close.

8.3 The further period of public consultation did not result in any representation that would give cause for the Local Authority to reconsider its recommendation for the closure of The Cherry Trees School.

## **9. TIMETABLE FOR IMPLEMENTATION OF SCHOOL CLOSURE**

9.1 If the decision is made for Cherry Trees Special School to close, the timetable for implementation will be as follows:

April 2021	A staff consultation will be issued
April - July 2021	The LA's Special Educational Needs Team and SENDIAS service will continue to work with The Cherry Trees pupils and families to confirm their transfer to new provisions as part of a personalised pathway.
August 2021	The Cherry Trees School will continue to operate up until the 31st August 2020 and then formally close.

## **10. EQUALITIES IMPLICATIONS**

10.1 An Equalities Assessment has been conducted by the LA and is attached at Appendix 2. This must be considered in detail before the Mayor in Cabinet

considers the matters above, as part of his decision on whether to close the School.

10.2 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”).

## **11. OTHER STATUTORY IMPLICATIONS**

11.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:

- Best Value Implications,
- Consultations,
- Environmental (including air quality),
- Risk Management,
- Crime Reduction,
- Safeguarding.
- Data Protection / Privacy Impact Assessment.

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

11.2 The LA and School Governing Body will continue to work 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 schools' 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

11.2 The Local Authority has a duty to 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 being considered in view of concerns over the School's viability and therefore its ability to sustain high quality education for its children.

11.3 When a special school closes its finances are returned to the Local Authority High Needs Funding Budget, including any surplus. However, this proposed closure is not a cost-cutting exercise as all money remains ring-fenced to children with SEN and disabilities.

11.4 The proposal for closure follows a strategic review, aimed at ensuring that money is spent to provide best value for all children. Best value cannot be achieved for The Cherry Trees as its falling roll will require the Local Authority to provide financial protection to ensure that the School can remain open. It therefore forms part of a strategy to significantly reduce the annual spend on financial protection for schools with falling rolls who are otherwise not financially sustainable.

(iii) Environmental (including air quality)

11.5 There are no environmental issues arising from this proposal.

(iv) Risk Management

11.6 If this recommendation is agreed, the closure process will be carefully managed and evaluated in line with statutory guidance, mindful of the needs of the children, families and staff, and thoroughly addressing the considerations of the Equalities Assessment. The plan to close the School on the 31<sup>st</sup> August 2021 will allow enough time for arrangements to be completed by September 2021 and therefore minimise or mitigate any risks.

(v) Safeguarding

11.7 The report deals with the Council's approach to managing the supply of school places for the local population. The efficient supply of school places contributes to the safeguarding of children by ensuring their access to good quality, sustainable education provision.

(vi) Data Protection / Privacy Impact Assessment

11.8 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.

11.9 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.

## **12. COMMENTS OF THE CHIEF FINANCIAL OFFICER**

12.1 The School is wholly funded by the High needs block of the Dedicated Schools Grant. The current size and running cost of this provision means that places are costing an exceptionally high amount and causing further pressure on an already overspent area of the Council budget. Closing the School and building provision supported by a mainstream primary School will ensure economies of scale savings in management and premises costs and better use of resources.

## **13. COMMENTS OF LEGAL SERVICES**

13.1 Section 14 of the Education Act 1996 requires local authorities to provide sufficient schools for primary and secondary education in their area. Local authorities also have best value duties in the performance of their functions under the Local Government Act 1999.

13.2 The procedure for closing a school is set out in the Education and Inspections Act 2006, the School Organisation (Establishment and Discontinuance of Schools) Regulations 2013, and the statutory guidance 'Opening and Closing Maintained Schools' (November 2019). The proposals set out in this report comply with the above legislation and guidance.

## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- 24<sup>th</sup> November Cabinet Report - Outcome of the consultation on the proposal for the closure of The Cherry Trees Special School
- 3<sup>rd</sup> March Cabinet Report - Outcome of the public consultation on prescribed alterations to both Ben Jonson and Bowden House Schools and proposal to establish an SEMH Provision at Ben Jonson School.

### **Appendices**

Appendix 1	Statutory Public Notice (2 <sup>nd</sup> stage consultation)
Appendix 2	Equalities Impact Assessment
Appendix 3	Public Consultation Paper (1 <sup>st</sup> stage consultation)
Appendix 4	Summary Analysis on the Current Financial Position of The Cherry Trees School
Appendix 5	Report on the 1 <sup>st</sup> Stage Consultation
Appendix 6	Link to the representation received in response to the statutory notice:

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

The following document(s) has been used in the preparation of this report:

- 'Opening and Closing Maintained Schools – Statutory Guidance for Proposers and Decision- Makers' (November 2019) in conjunction with Part 2 and

Schedule 2 of the Education and Inspections Act (EIA) 2006 as amended by the Education Act (EA) 2011

- The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013

**Officer contact details for documents: N/A**