

Cabinet 3 March 2021	 TOWER HAMLETS
Report of: James Thomas, Corporate Director, Children and Culture	Classification: Unrestricted
Report on the outcome of the statutory consultation on the proposal to make prescribed alterations to Bowden House School and Ben Jonson School to support the development of Primary SEMH provision	

Lead Member	Councillor Asma Begum, Cabinet Member for Children, Schools and Young People
Originating Officer(s)	Christine McInnes
Wards affected	All wards
Key Decision?	Yes
Forward Plan Notice Published	Jan 2021
Reason for Key Decision	Outcome will 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, and for the implementation of the SEND Strategy
Strategic Plan Priority / Outcome	Children and young people are protected so they get the best start in life and can realise their potential, SEND Strategy

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 prescribed alterations to Bowden House and Ben Jonson schools to enable a co-educational, integrated SEMH primary provision on the Ben Jonson site. It recommends that the Mayor in cabinet reaches a decision on specific prescribed alterations to the two schools.

Ben Jonson Proposal for a prescribed alteration to Ben Jonson School to establish an, up to 12 place, Special Educational Needs provision from September 2021.

Bowden House.

The proposal requires a “prescribed alteration” for Bowden House School to extend its age range to 5-19 and to increase its capacity by 12 pupils at the Ben Jonson site. The provision at the Ben Jonson site would be day provision only and co-educational. There will be no change to the Bowden House Seaford secondary provision.

The report (will include) includes: a summary of representations received; the council’s and schools’ response; officer’s recommendations; and the decisions available to the Mayor in Cabinet, its appendices include an Equalities Impact Assessment and information and frequently asked questions from Stage 1 consultations, which forms part of the SEMH Implementation plan, and information

on the Statutory Notices and any representations.

RECOMMENDATION:

1. Having considered the responses to statutory (public) notice at Appendix 3, the Equalities Assessment at Appendix 4 and the earlier public consultation report, Appendix 1, it is recommended that the Mayor in cabinet approves the proposal to agree the prescribed alterations to Ben Jonson and Bowden House Schools as set out in the Statutory Notices at Appendix 2

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 prescribed alterations in order to establish Primary SEMH provision in Tower Hamlets that meets the requirements of the SEN Strategy, the needs of local children and the SEMH Primary Implementation Plan.
- 1.2 The provision would replace the provision at Cherry Trees School with provision more closely fitting the Local Authority commitment the following principles for Primary SEMH provision.
 - access to specialist SEMH support for girls and boys in Borough
 - stronger access to the full Primary curriculum
 - stronger support to access Mainstream provision
 - better, and more flexible, transitions to the right provision to meet the needs of the child

2. ALTERNATIVE DECISIONS

- 2.1 The Mayor could decide not to agree to the prescribed alterations in which case the new provision would not be available to children should the decision to close Cherry Trees be undertaken, nor would the Local Authority be able to deliver its SEN Strategy.
- 2.2 The Mayor could decide to delay the decision on the prescribed alterations until later. However, this uncertainty would adversely impact on the provision of education for the current pupils in primary school with SEMH 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 prescribed alterations at Ben Jonson and Bowden House schools to enable the Integrated Provision at the Ben Jonson site.

4. INTRODUCTION

- 4.1 Following a report to Cabinet on 24th 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. The report references the proposed integrated new provision at Ben Jonson site.
- 4.2 As part of the SEMH Implementation Plan and SEND Strategy invitations were sought in July 2020 for schools interested in running a 24 place new integrated co-educational primary provision.
- 4.3 The successful expression of interest was a proposal for an integrated provision run by Bowden House Special School and Ben Jonson Primary School at the Ben Jonson school site.
- 4.4 The two schools, with Local Authority support, have completed a Stage One consultation (Appendix 1) and Statutory Notices have now been published, the deadline for representations was February 8th 2021.
- 4.5 The dovetailing of the timetable for the two reports will allow prescribed alterations for the new provision to be considered alongside the Cherry Trees closure proposal. If the Cherry Trees proposal is agreed smooth transitions for any children at Cherry Trees for whom either provision at the Ben Jonson site would be appropriate, can be secured for September 1st, 2021.

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 9 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 TO MAKE PRESCRIBED ALTERATIONS TO BEN JONSON AND BOWDEN HOUSE SCHOOLS

- 6.1 Full consideration has been given to the wellbeing of the school community, including pupils, families and staff, at Cherry Trees and the support they will require if the recommendation for closure is approved. Approving the prescribed alterations in place will ensure that alternative provision would be available at the Ben Jonson site, where parents wish to access it, and the children will still be primary age.
- 6.2 There are a number of children in Tower Hamlets whose SEMH needs are not currently being fully supported, and some who have been placed outside of the Borough because placements at Cherry Trees have not been appropriate.
- 6.3 Careful consideration has been given to the Ben Jonson school community responses to Stage One consultation and the Statutory Notice have been overwhelmingly positive. A summary of responses has been presented to the Steering Group (Feb 8th) for the provision and to both schools' governing bodies (Feb 9th and Feb 11th). Both schools have significant successful experience and have a strong reputation for inclusive practice. The provision will be a strong resource for the whole of Tower Hamlets.
- 6.4 An Equalities Impact Assessment (EIA) has been undertaken and is presented in the supporting documentation (Appendix 4). 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 began with the Revised SEN Strategy in January and the SEMH implementation plan in June and July. It was also linked with the Cherry Trees consultation process which 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 24th November 2020. Parents and staff at Ben Jonson and Bowden House Schools have also contributed to the Stage One Report (Appendix 1). Statutory Notices were published on January 11th. They are included in Appendix 2, along with a feedback report.
- 7.2 The statutory notices took into account the guidance in Annex A of the DFE Guidance (2018) for prescribed alterations that "the proposal should be accessible to all interested parties and therefore use "plain English" ". In addition, because the provisions are linked to the closure of Cherry Trees Opening and Closing Maintained Schools guidance was followed.
- 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 the first stage consultation report (see Appendix 1).

- 7.4 Prior to the start of the consultation, the Local Authority's independent consultant held a series of preparatory meetings with Bowden House and Ben Jonson Schools' Governing Bodies as well as Cherry Trees School Governors and staff to discuss the background and process for the consultation.
- 7.5 A joint steering group from Ben Jonson and Bowden House Schools has been set up through a Memorandum of Understanding to help establish the new provision and oversee consultation and preparation, to ensure excellence.
- 7.6 Cherry Trees School held individual meetings for families who may wish to consider the Ben Jonson site provision to be named on the EHC Plan for their child. They were also sent copies of the Statutory Notice for the two schools, as well as the Cherry Trees Statutory Notice.
- 7.7 Statutory Notices were posted at all 3 Ben Jonson entrances and posted on Ben Jonson and Bowden House websites. They were included in the Director's Bulletin for Headteachers and sent to Chairs of Governors and other stakeholders.

Staff Meetings have been held at both schools

A series of 6 zoom meetings were held on 1st – 5th February 2021 with the independent consultants and representatives from the two schools governing bodies. At these meetings the requirements of Annex A from DFE Guidance, Making Prescribed Changes were outlined for attendees. 46 people attended these meetings.

In addition, 2 written representations were received, both fully supporting the proposals. One asked whether there would be a proposal for secondary girls in the near future.

Appendix

- 7.8 A draft Service Level Agreement (Appendix 5) has been agreed in principle by Bowden House and Ben Jonson governing bodies. Staff from Ben Jonson and Bowden House have begun planning with Cherry Trees to support any transitions, should the closure of Cherry Trees be agreed.
- 7.9 Views expressed by pupils and parents from Cherry Trees, who may transfer to the new provision, have been captured in the annual reviews of their Education Health and Care Plans (EHCPs).
- 7.10 Governors at Bowden House, Ben Jonson and Cherry Trees Schools have considered the prescribed alterations guidance and ran consultations to ensure all aspects of Annex A (DFE Making Significant Changes 2018) and, because the proposal is linked to the closure of Cherry Trees, the 2019 DFE guidance on open and closing maintained schools was followed.
- 7.11 Governors and staff from all three schools attended zoom meetings and expressed unanimously positive views on the provision. Parents from Bowden House and Ben Jonson School also attended and were very positive about the provision, as were 2 Cherry Trees parents. One parent was concerned about friendship groups for her child, at Ben Jonson.
- 7.12 Having considered all the responses at Stage One, and to the Statutory Notice, governors at Ben Jonson and Bowden House believe that the Local Authority

should agree the prescribed alteration proposals. This will give re-assurance to parents at Cherry Trees School and opportunities for children throughout the Borough. This will be supportive for all Tower Hamlets Schools.

7.13 Governors and the Local Authority have agreed draft implementation plans and value for money financial arrangements, which will be funded through the High Needs DFE funding block.

7.14 Pupils at Ben Jonson will be given the opportunity to discuss the new provision in assemblies and their classes when the school fully re-opens.

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 Cherry Trees was reported to the 24th November 2020 Cabinet meeting and to Bowden House and Ben Jonson Governing Body meetings on January 4th, supplemented with feedback from the prescribed alterations consultation and is included again with this report as Appendix 1.

8.2 2 written representations were received in response to the statutory notice, they were both extremely positive about the new provision. All zoom meetings were also very positive.

8.3 The further period of public consultation did not result in any representation that would give cause for the Local Authority not to make the prescribed alterations so that Ben Jonson and Bowden House Schools can deliver the new provision from September 2021.

9. TIMETABLE FOR IMPLEMENTATION OF PRESCRIBED ALTERATIONS

9.1 If the decision is made to approve the prescribed alterations, the timetable for implementation will be as follows:

May 2021	Formal sign off of Service Level Agreement (Appendix 5) for new provision
April - July 2021	Development of new provision, including base line research, recruitment and transition planning
September 2021	The 24 place Primary SEMH Integrated provision will be established at the Ben Jonson site consisting of a 12 place mainstream provision with specialist support and a 12 place specialist provision, with integrated governance. In order to fully support transition and integration the provision is expected to gradually increase to its full capacity over a three year period.

10. EQUALITIES IMPLICATIONS

- 10.1 An Equalities Assessment has been conducted by the LA and is attached at Appendix 4. 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

(i) Managing the Impact of the Prescribed Alterations on School Staff

- 11.1 There will be no change to the existing provision for either school so there will be no significant impact on their existing roles, other than additional responsibility for Senior Leaders.
- 11.2 As new roles are being created there will be a recruitment process and this may include redeployment opportunities for staff from Ben Jonson, Bowden House and/or Cherry Trees School. Governors at Ben Jonson and Bowden House Schools will consider ring fenced interviews for staff from Borough schools facing staffing reductions but wish to retain the right to appoint based on merit, to ensure excellence for the new provision.

(ii) Best Value Implications

- 11.3 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. The funding envelope for the new integrated provision is expected to improve value for money from the High Needs Budget.

(iii) Environmental (including air quality)

- 11.4 The new provision is more centrally placed in the Local Authority so travel costs and times for children may be reduced. The schools is not directly on a main road, so air pollution is likely to be reduced compared to the Cherry Trees site.

(iv) Risk Management

- 11.5 If this recommendation is agreed, risks from the possible closure process at Cherry trees will be reduced. Careful planning, management and evaluation in line with statutory guidance, mindful of the needs of the children, families and staff, and thoroughly addressing the considerations of the Equalities Assessment will ensure appropriate, effective and safe provision is in place.
- 11.6 Building alterations will need to be in place to ensure Health and Safety both for the children attending the provision and for Ben Jonson children before the integrated provision can accommodate more than a small number of children.

(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.

11.8 The SLA for the new provision includes safeguarding considerations, and the commissioning of social care support, if required, by the Local Authority.

(vi) Data Protection / Privacy Impact Assessment

11.9 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.

11.10 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.

12. COMMENTS OF THE CHIEF FINANCIAL OFFICER

12.1 Funding for the provision will come from the high needs block of the dedicated schools grant (DSG). Ensuring adequate in-house provision for SEMH pupils provides the most cost effective solution for the authority. Demand for external provision where there is a shortfall appropriate provision continues to push up prices in the external market. Working through the larger establishments of Bowden House and Ben Johnson School will ensure costs will be lower than those at the smaller provision of Cherry trees School through the benefits of shared specialist management costs. There will be available funding from the HNB if necessary.

13. COMMENTS OF LEGAL SERVICES

13.1 The procedure for making a prescribed alteration to a maintained school is set out in the Education and Inspections Act 2006, the School Organisation (Prescribed Alterations) (England) Regulations 2013 and the statutory guidance 'Making significant changes ('prescribed alterations') to maintained schools' (October 2018).

The proposals set out in this report involve making a prescribed alteration.

13.2 The guidance and regulations set out in detail the process to be followed.

13.3 The proposals in this report comply with the above legislation and guidance.

Linked Reports, Appendices and Background Documents

- **3rd** March 2021 Cabinet Report – Consideration of Statutory Notice Cherry Trees
- **24th** November 2020 Cabinet Report - Outcome of the consultation on the proposal for the closure of The Cherry Trees Special School

- 25th November Cabinet re Closure of Cherry Trees
- <https://democracy.towerhamlets.gov.uk/documents/s176275/6.4%20Report%20on%20the%20outcome%20of%20the%20preliminary%20stakeholder%20consultation%20pre-statutory%20on%20the%20propos.pdf>
- Tower Hamlets SEND Strategy
- https://5f2fe3253cd1dfa0d089-bf8b2cdb6a1dc2999fecbc372702016c.ssl.cf3.rackcdn.com/uploads/ckeditor/attachments/6072/Draft_SEND_Strategy_2020-2024_Feb_2020_.pdf
- SEMH Update Reports
- Report to Tower Hamlets Health and Wellbeing Board January 2020. Agenda Items 4 and 5
- <https://democracy.towerhamlets.gov.uk/documents/g8995/Public%20reports%20pack%2014th-Jan-2019%2017.00%20Tower%20Hamlets%20Health%20and%20Wellbeing%20Board.pdf?T=10>
- 2019 Tower Hamlets SEMH Schooling Review
- 2020 Meeting Social, Emotional and Mental Health Needs for Primary Age Children in Tower Hamlets (SEMH Implementation Plan)

- **Appendices**

Appendix 1	Stage One Consultation Report
Appendix 2	Statutory Notices
Appendix 3	Representations Report
Appendix 4	Equalities Impact Assessment
Appendix 5	Draft SLA

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
- Making Significant Changes ('Prescribed Alterations) to Maintained Schools. Statutory Guidance for Proposers and decision-makers.2018

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