

EXECUTIVE BOARD – 21 JANUARY 2014

Subject:	Change of age range at Robert Shaw Primary School, to include a nursery		
Corporate Director(s)/ Director(s):	Alison Michalska, Corporate Director of Children and Adults		
Portfolio Holder(s):	Councillor David Mellen, Portfolio Holder for Children's Services		
Report author and contact details:	Jennifer Shadbolt, Project Manager, School Organisation jennifer.shadbolt@nottinghamcity.gov.uk 0115 87 65629		
Key Decision	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Reasons: Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings <input type="checkbox"/> of £1,000,000 or more taking account of the overall impact of the decision	Revenue <input type="checkbox"/> Capital <input type="checkbox"/>		
Significant in terms of its effects on communities living or working in an area consisting of two or more wards in the City	<input type="checkbox"/> Yes	No <input checked="" type="checkbox"/>	
Subject to call-in	<input checked="" type="checkbox"/> Yes	No <input type="checkbox"/>	Total value of the decision: Nil
Relevant Council Plan Strategic Priority:	Wards affected:		
World Class Nottingham	<input type="checkbox"/>	Leen Valley	
Work in Nottingham	<input type="checkbox"/>		
Safer Nottingham	<input type="checkbox"/>		
Neighbourhood Nottingham	<input type="checkbox"/>	Date of consultation with Portfolio Holder(s):	
Family Nottingham	<input checked="" type="checkbox"/>	7 August 2013	
Healthy Nottingham	<input type="checkbox"/>		
Leading Nottingham	<input type="checkbox"/>		
Summary of issues (including benefits to citizens/service users):			
Consultation on a proposal to lower the age range of Robert Shaw Primary School was successful and the Executive Board approved the issuing of Statutory Notices in October 2013.			
This report updates the Executive Board on the outcomes of this second consultation period.			
Recommendation(s):			
1 To consider the outcomes of the consultation and approve the proposal to lower the age range of Robert Shaw Primary School, to allow the school to operate a nursery.			

1 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

- 1.1 Building work is currently underway at Robert Shaw Primary School following a consultation in 2010 to expand the school. As part of this expansion, an additional classroom space is being created which would allow the school to operate a Foundation Unit.
- 1.2 This would be a combined nursery and Reception space and would allow the school to operate a nursery in-house. This will replace the current pre-school that is privately operated on the Robert Shaw site.
- 1.3 The age range of Robert Shaw Primary School will reduce from 4 – 11 to 3 – 11 and the nursery will provide 52 FTE (full time equivalent) places.
- 1.4 Approval to consult on this proposal was granted by the Portfolio Holder for Children's Services on 7 August 2013.

- 1.5 Consultation with parents, carers, staff and governors ran from 2 September until 29 September 2013. 48 people responded to the consultation and 96% of these were in favour of the proposal.
- 1.6 Following this, a post consultation report was considered by the Executive Board on 15 October 2013 and approval was given to issue a statutory notice outlining the proposal to lower the age range of Robert Shaw.
- 1.7 The statutory notice was published in the Topper newspaper and hung on the gates of the school on Wednesday 30 October 2013 and comments or objections were invited until Wednesday 11 December 2013. No objections or comments were received.

2 REASONS FOR RECOMMENDATIONS

- 2.1 The response to the consultation on lowering the age range of Robert Shaw has been very positively received and the additional nursery places are needed in the area.

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 3.1 No other options were considered when making this recommendation.

4 FINANCIAL IMPLICATIONS (INCLUDING VALUE FOR MONEY/VAT)

- 4.1 As a result of lowering the age range, the additional places will be funded by the Early Years offer of 25 hours free per child, per week, with any additional hours being funded directly by parents.

5 RISK MANAGEMENT ISSUES (INCLUDING LEGAL IMPLICATIONS AND CRIME AND DISORDER ACT IMPLICATIONS)

- 5.1 Human Resources (HR) supports the proposal to lower the age range of Robert Shaw Primary School, to include a nursery run at the school from 1 February 2014.
- 5.2 The new Foundation Unit will provide for a 52 place nursery run by the school, the proposal for which is to bring in-house the existing 20 place pre-school which is currently run externally by a Voluntary Management Committee. This will constitute a transfer of an economic entity that has retained its identity, therefore the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) will apply.
- 5.3 If the proposal goes ahead, the proposed date of closure of Robert Shaw Pre-School is 1 February 2014 and Robert Shaw Primary School will be opening the nursery on a proposed date of 2 February 2014. All the children from the pre-school would then transfer to the nursery on this date.
- 5.4 The pre-school employees who are eligible to transfer to Robert Shaw Primary School will have their terms and conditions of employment protected under TUPE. The School will need to ensure that the appropriate HR and Legal advice is being followed to ensure the necessary processes are in place to meet the legal requirements of TUPE and also in relation to pension provision. We are currently working with the School and Legal to ensure this is fulfilled.

- 5.5 In light of the determination that TUPE applies to the proposals contained within this report, the appropriate full and proper TUPE consultation with employees and the recognised trade unions or elected employee representatives (if there is no recognised union) has been undertaken. Both the pre-school and the nursery have built in reasonable time to inform and consult in relation to any of their own employees who may be affected by the transfer or any measures taken in connection with it. In this case, the proposal to change the hours that staff are required to work. Legal advice has been sought to ensure this is managed effectively and appropriate consultation is undertaken.
- 5.6 In addition, TUPE requires the transferor (the pre-school) to provide the transferee (the nursery) with employee liability information not less than 14 days before the relevant transfer takes place.
- 5.7 In terms of any other workforce implications, the governing body are giving careful consideration to the appropriate staffing establishment and the potential need to make suitable appointments to ensure the school is adequately resourced in line with School Teacher's Pay & Conditions, Staffing Guidance under the Education Act 2002, and the Restructuring, Recruitment, and Pay Policies adopted by the governing body.
- 5.8 HR and legal advice have been considered in the implementation of any new or extended staffing structures, to ensure appropriate consideration is given to employment law, policy and practice.
- 5.9 The school organisation regime is set out in the Education and Inspections Act 2006 ("EIA"), regulations made under the EIA and guidance made by the Secretary of State, both statutory (using powers in the EIA) and non-statutory. It should be noted that whilst this law and guidance is currently in force, with the current government taking office in 2010 and the formation on 12 May 2010 of the Department for Education this law and guidance may no longer reflect government policy and may be changed in the near future.
- 5.10 Under section 19 of the EIA, a local authority is required to publish a proposal to make a prescribed alteration to a maintained school. In essence, a prescribed alteration is one designated as such by regulations. Currently, the relevant regulations are the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 ("the Prescribed Alterations Regulations 2007").
- 5.11 The proposal referred to in this report to establish a nursery as part of Robert Shaw Primary School ("the School") by offering education provision to children under 4 in a nursery within the School's Foundation Unit, instead of through the existing independently run pre-school, and therefore lowering the age range of the School from 4 - 11 to 3 - 11 would appear to be a prescribed alteration. This is because the proposal would entail an alteration of the lower age limit of the School such that when taken with all previous such alterations (if any) taking place since the appropriate date the lower age limit is at least a year higher or lower than the lower age limit on the appropriate date (the Prescribed Alterations Regulations 2007, Schedule 4, paragraph 4). Since the School has been established for more than 5 years and it does not appear there have been any previous proposals to lower the age limit of the School, the appropriate date here is the date falling 5 years before the date on which the local authority form the intention to make the alteration in question. Clearly, if there have been no previous such alterations and

as the proposal entails a clear lowering of the age limit of the School by one year then the proposal would be a prescribed alteration. Moreover, as the proposed alteration is not temporary (i.e. in place for no more than two years) it is still caught by the regulations.

5.12 Therefore, having been published the authority must now consider and determine whether to implement the proposal referred to in this report in accordance with paragraph 31 of Part 2 of Schedule 5 to the Prescribed Alterations Regulations 2007. That determination must be made within the period of 2 months from the end of the representation period (that is, by 11 February 2014). In so determining, the authority must:

- (a) reject the proposal;
 - (b) approve the proposal without modifications; or
- approve the proposal with such modifications as the authority think desirable (this option requires prior consultation with the governing body of the School).

5.13 The statutory notice for this proposal set out proposed implementation with effect from 1 February 2014. If this proposal is to be approved, it is also advisable that a clear date for implementation is set out.

5.14 Lastly, it is advisable that HR and legal advice is taken in relation to the HR and employment law ramifications of this school organisation project, particularly as to whether the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") are engaged.

6 SOCIAL VALUE CONSIDERATIONS

6.1 Not applicable.

7 REGARD TO THE NHS CONSTITUTION

7.1 Not applicable.

8 EQUALITY IMPACT ASSESSMENT (EIA)

Has the equality impact been assessed?

- (a) not needed (report does not contain proposals for new or changing policies, services or functions, financial decisions or decisions about implementation of policies development outside the Council)
- (b) No
- (c) Yes – Equality Impact Assessment attached

9 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

9.1 None.

10 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

10.1 Delegated Decision 0974

http://open.nottinghamcity.gov.uk/comm/download2.asp?dltype=inline&filename=1034/DD0974_Rosslyn_Full_Doc.pdf

10.2 Executive Board report and minutes – 15 October 2013

<http://open.nottinghamcity.gov.uk/comm/download3.asp?dltype=inline&filename=58332/RosslynPark.pdf>

11 OTHER COLLEAGUES WHO HAVE PROVIDED INPUT

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