

**CORPORATE SERVICES DEPARTMENT**  
Director – Caroline Holland



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***Date: 26 June 2018***

Dear Councillor

Notification of a Decision taken by the **Director of Children, Schools and Families**

The attached **Key** decision has been taken by the Director of **Children, Schools and Families**, with regards to the **Expansion of Cricket Green School** and will be implemented at **noon on Friday 29 June 2018** unless a call-in request is received.

The [call-in](#) form is attached for your use if needed and refers to the relevant sections of the constitution.

Yours sincerely

**Democracy Services**

## KEY DECISION TAKEN BY AN OFFICER UNDER DELEGATED AUTHORITY

### Title of report and reason for exemption (if any)

Expansion of Cricket Green School – to approve the proposals for a prescribed alteration to expand the school

### Decision maker

Rachael Wardell, Director of Children, Schools and Families

### Date of Decision

20 June 2018

### Date report made available to decision maker

8 June 2018

### Date report made available to the Chairs of the Overview and Scrutiny Commission and of any relevant scrutiny panel

Not applicable

### Decision

A. To approve the proposals for a prescribed alteration to Cricket Green School to lower the age range of the school from 4-19 years old to 3-19 years old and to increase the total pupil capacity from 199 to 260 places, with the 260 places comprising of 8 Full time Equivalent places nursery, 70 primary age pupil places, 150 secondary age pupil places and 32 post-16 pupil places

B. That the above is conditional on the capital scheme being granted planning permission by 31 December 2018.

### Reason for decision

To provide places for pupils with special educational needs and disabilities (SEND) in the local area and the expansion of Cricket Green School provides good value for money. Cricket Green is rated by Ofsted as "Outstanding" and the council's Head of Education is satisfied that the leadership of the school has the management capacity to continue to raise standards while the school expands.

### Alternative options considered and why rejected

The council has a statutory duty to provide sufficient school places including for children with SEND so, given the increase in demand, there is no alternative but to provide or commission more special school places. To this end, the council needs to meet the further increase in special school places for children with ASD (Autistic Spectrum Disorder) and MLD (Moderate Learning Difficulties).

The alternatives to the expansion of Cricket Green School are to either commission or facilitate a new state- funded school (which should be an Academy or Free School) or rely on commissioning more places from the independent sector.

The council has already needed to commission more places in the independent sector in recent years and it costs considerably more in placement and transport costs, and requires children to travel away from the local area. With regard to a new school, the site searches for primary and secondary school shows there are no easy site options, and expanding an existing Outstanding school provides good value for money with an Outstanding provider. It is also much quicker to deliver to ensure that the benefits can be received more quickly.

#### Documents relied on in addition to officer report

Officer report and appendices:

Appendix 1 – Copy of published notice and prescribed information

Appendix 2 – Summary of consultation responses

Appendix 3 – Guidance for decision makers

#### Declarations of Interest

None

<b>Approval of decision</b>		
Signature: 	Designation: Director of Children, Schools and Families	Date:  June 2018
Rachael Wardell		

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## Chief Officer Key Decision

**Date: 6 June 2018**

**Subject: Expansion of Cricket Green School – to approve the proposals for a prescribed alteration to expand the school**

Lead officer: Jane McSherry, Assistant Director for Education

Lead member: Councillor Caroline Cooper-Marbiah

Contact officer: Tom Procter, Head of Contracts and School Organisation

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### **Recommendations:**

- A. To approve the proposals for a prescribed alteration to Cricket Green School to lower the age range of the school from 4-19 years old to 3-19 years old and to increase the total pupil capacity from 199 to 260 places, with the 260 places comprising of 8 Full time Equivalent places nursery, 70 primary age pupil places, 150 secondary age pupil places and 32 post-16 pupil places
  - B. That the above is conditional on the capital scheme being granted planning permission by 31 December 2018.
  - C. That the reason for this decision is to provide places for pupils with special educational needs and disabilities (SEND) in the local area and the expansion of Cricket Green School provides good value for money. Cricket Green is rated by Ofsted as “Outstanding” and the council’s Head of Education is satisfied that the leadership of the school has the management capacity to continue to raise standards while the school expands.
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## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1 Cricket Green School is a special school for children with additional complex and varied needs.
- 1.2 Demand for SEND places has increased and is forecasted to continue to increase into the next decade. To accommodate some of the anticipated increase, the Council published a statutory proposal to expand Cricket Green School from 1 September 2019 including the provision of a nursery.
- 1.2 The statutory notice period expired on 28 March 2018 and it is now for the council to decide whether to agree to the significant enlargement and change in age range of Cricket Green School. As statutory decision maker, the council must also state the reason for the decision.
- 1.3 Over £5 million is approved in the council’s Capital Programme for the refurbishment and extension of Cricket Green School to enable the school to increase the capacity of the school from 199 to 260 places.

## **2 DETAILS**

- 2.1. The London Borough of Merton has a legal obligation to provide sufficient school places for its area. There is a significant increase in demand for mainstream school places in Merton which is now reaching secondary school age, and this increase is proportionally greater for children with Special Educational Needs and Disabilities. The council area has experienced a significant increase in the number of statements/EHCP (Education and Health Care Plans) over the past five years, and in particular children with ASD (Autistic Spectrum Disorder), MLD (Moderate Learning Difficulty) and SLCN (Speech, Language and Communications Needs). The table in appendix 1 shows this increase up to 2017.
- 2.2. Cricket Green School is now full in most year groups and SEND case officers have not been able to place all Merton children at the school for whom Cricket Green School would be the most suitable placement. There is also an identified need to assess nursery children with SEN early to ensure appropriate school pathways.
- 2.3. The overall objective is to provide sufficient good quality local school places for children with SEND. Cricket Green School is rated "Outstanding" by Ofsted and has received this judgement in three consecutive Ofsted inspections - in 2010, 2013 and 2017.
- 2.4. The school provides value for money in being considerably less expensive to provide education than non-maintained or independent special school provision and so meets the objective to provide suitable, high quality places to meet the growing number of SEND children.
- 2.5. The proposed expansion will be enabled by a physical extension to the school through a new two storey building to the rear of the site and other changes to ensure the school is fit for purpose with the following objectives:
- Additional 61 places, mostly for secondary but also including providing an assessment nursery and ensuring one extra class in primary
  - Replacing a life expired mobile unit currently housing 3 classrooms
  - A design that externally links the flow of buildings, makes best use of external space, and allows children to move safely around the site.
  - Sufficient ancillary space including enlarged hall and office space to reflect the school will have doubled in size from 130 to 260 pupils over the past 10 years
- 2.6. The process of school expansion is subject to a statutory procedure and statutory guidance, which is outlined in the consultation and legal implications section of this report.

### **3 ALTERNATIVE OPTIONS**

- 3.1. The council has a statutory duty to provide sufficient school places including for children with SEND so, given the increase in demand, there is no alternative but to provide or commission more special school places. To this

end, the council needs to meet the further increase in special school places for children with ASD and MLD.

- 3.2. The alternatives to the expansion of Cricket Green School are to either commission or facilitate a new state- funded school (which should be an Academy or Free School) or rely on commissioning more places from the independent sector.
- 3.3. The council has already needed to commission more places in the independent sector in recent years and it costs considerably more in placement and transport costs, and requires children to travel away from the local area. With regard to a new school, the site searches for primary and secondary school shows there are no easy site options, and expanding an existing Outstanding school provides good value for money with an Outstanding provider. It is also much quicker to deliver to ensure that the benefits can be received more quickly.

## **4 CONSULTATION UNDERTAKEN OR PROPOSED**

- 4.4 To comply with the statutory requirements a statutory notice was published on 1 March 2018 in the local newspaper and on the council's website. Key stakeholders were also informed including neighbouring councils, health commissioners, the school governors and all parents of children at the school. As required in the regulations, four weeks were provided for any person to object to or make comments on the proposal. A public meeting was held on 12 March 2018.

### **Responses to the consultation**

- 4.5 A detailed summary of the consultation responses and notes of the public meeting is provided as appendix 2 to this report.
- 4.6 The two headteachers and neighbouring Local Authority that responded fully supported the proposals. The council received four responses from parents; one of these was signed by 15 parents. The public meeting was attended by approximately 12 parents and governors and two pupils, with presentations by the Headteacher of Cricket Green School and the council.
- 4.7 The consultation demonstrated no objection to the principle of expanding Cricket Green School, but concerns were raised on a number of details as follows:
  - I. Concerns regarding a reduction in open space due to the additional buildings and children, and a request to increase the grounds (partly into council owned land "Worsfold House" at the rear)
  - II. Concerns regarding the future development of Worsfold House land and to request its access road is widened
  - III. Concerns about traffic and parking with a request for a more detailed breakdown of suggested parking arrangements
  - IV. Concerns regarding the impact of the increase in numbers on health/therapy professionals (Occupational therapist, speech and language therapist, physiotherapist, CAMHS, school nurse, pay therapist), with reassurance requested that access to these vital

services will not be affected and staffing levels will increase to meet demand

4.8 The response of officers to these concerns are as follows:

*I. Reduction in open space*

The reduction in open space has been limited as the capital scheme includes the removal of a single storey life expired modular building, and most of the new build is two-storey. Some space has been taken from Worsfold House to provide a more coherent site area for Cricket Green School with the new building, but the council does need to balance the use and value of its land. However, in response to this and the planning application consultation, the landscape design is being enhanced to ensure that the use of the spaces is well designed and considered for the children and staff. The school leadership team and council officers are satisfied that suitable outdoor space will be provided for the pupils.

*II. Future development of Worsfold House land/access road*

4.9 This is not a matter for this expansion but is noted for any future proposals the council may have for this land

*III. Concerns about traffic and parking with a request for a more detailed breakdown of suggested parking arrangement*

4.10 The landscape design has been developed to include a mini bus turning area, and there is an improvement in relation to pupil safety and vehicles as there will be a secure fence separating all vehicles from pupils.

*IV. Concerns regarding the impact of the increase in numbers on health/therapy professionals*

4.11 Resources from health/therapy professionals are based on child numbers and need rather than on a per school basis. However, the council and school are committed to monitoring this to ensure that, as the school grows, there isn't a related reduction in support.

4.12 *Overall conclusion following consultation responses*

4.13 Following the consultation, and taking into account the above, officers' views remain that the expansion of Cricket Green School should proceed to provide SEND local school places that are value for money.

## **5 TIMETABLE**

5.1. A planning application for the expansion capital works at Cricket Green School was submitted earlier this year and is due to be considered by the council's Planning Applications Committee before the end of June 2018.

Subject to approval of this report and the planning application it is aimed that a contract decision on the building works will be made in July 2018 so that works can commence in the school summer holidays, with the main phase of the works completed for September 2019 for additional pupils.

## **6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

### *Capital*

- 6.1. The Capital Programme 2018-20 includes over £5 million to fund the expansion of Cricket Green School which, based on a Quantity Surveyor's estimate of the detailed design, is sufficient to fund the required capital works.

### *Revenue*

- 6.2. The additional pupils will need to be funded from the Dedicated Schools grant. However, this growth is significantly less as a result of the school expansion than the alternative of commissioning places in independent schools.

## **7 LEGAL AND STATUTORY IMPLICATIONS**

- 7.1. The council has a duty under section 14 of the Education Act 1996 to secure that sufficient schools are available for its area to provide the opportunity of appropriate education for all pupils. It must exercise this function with a view to securing diversity in the provision of schools, and increasing opportunities for parental choice. In exercising this function the council must have regard to the need for securing that special educational provision is made for pupils who have special educational needs.
- 7.2. The permanent expansion of a maintained special school to increase the number of pupils by 10% or more than 20 pupils and a change of age range of 1 year or more are prescribed alterations for which statutory proposals must be published and approved under the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013.
- 7.3. The Regulations require that a summary notice of proposals is published in a local paper and on the council's website. Details of the proposals must be published on the council's website and copies provided on request. Copies of the proposals must be sent to the governing body of the school and parents of pupils. Comments on or objections to the proposals can be made within a 4 week period from publication of proposals.
- 7.4. The council is the decision maker for proposals. Approval can be conditional subject to certain events specified in the Regulations, including for instance the grant of planning permission.
- 7.5. The council must give reasons for its decision. The decision and the reasons behind it must be published on the council's website and the LA must also notify the school governors, local CE and RC dioceses, parents of pupils at the school and any other body considered appropriate. The local Church of England diocese and the local Roman Catholic diocese have the right to appeal to the Schools Adjudicator against the decision within four weeks of the decision being made.
- 7.6. The council has a duty to implement approved proposals. The DfE register (EduBase) must be updated when proposals have been implemented.
- 7.7. In deciding whether or not to approve proposals, the council should have regard to the statutory guidance, and "Statutory guidance for decision-



makers deciding prescribed alteration and establishment and discontinuance proposals April 2016”.

- 7.8. The council as decision-maker must be satisfied that appropriate consultation and the representation period required by the Regulations has been undertaken and must consider all view submitted on the proposal
- 7.9. In planning and commissioning SEND provision or considering a proposal for change, LAs should aim for a flexible range of provision and support that can respond to the needs of individual pupils and parental preferences. This is favourable to establishing broad categories of provision according to special educational need or disability. Decision-makers should ensure that proposals:
- take account of parental preferences for particular styles of provision or education settings;
  - take account of any relevant local offer for children and young people with SEN and disabilities and the views expressed on it;
  - offer a range of provision to respond to the needs of individual children and young people, taking account of collaborative arrangements (including between special and mainstream), extended school and Children’s Centre provision; regional centres (of expertise) and regional and sub-regional provision; out of LA day and residential special provision; 13
  - take full account of educational considerations, in particular the need to ensure a broad and balanced curriculum, within a learning environment where children can be healthy and stay safe;
  - support the LA’s strategy for making schools and settings more accessible to disabled children and young people and their scheme for promoting equality of opportunity for disabled people;
  - provide access to appropriately trained staff and access to specialist support and advice, so that individual pupils can have the fullest possible opportunities to make progress in their learning and participate in their school and community;
  - ensure appropriate provision for 14-19 year-olds; and
  - ensure that appropriate full-time education will be available to all displaced pupils. Their statements of special educational needs must be amended and all parental rights must be ensured. Other interested partners, such as the Health Authority should be involved. Pupils should not be placed long-term or permanently in a Pupil Referral Unit (PRU) if a special school place is what they need.
- 7.10. The Guidance advises that, when considering any reorganisation of provision that the LA considers to be reserved for pupils with special educational needs and disabilities (including that which might lead to children being displaced) proposers will need to demonstrate how the proposed alternative arrangements are likely to lead to improvements in the standard, quality and/or range of educational provision for those children. Decision-makers should make clear how they are satisfied that this SEN improvement test has been met, including how they have taken account of

parental or independent representations which question the proposer's assessment.

**8. HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

8.1 The expansion of Cricket Green School will contribute to the Authority providing access to a local SEND school place for all its residents who want one. The proposal will assist the aim of ensuring that children with special educational needs will be able to attend suitable local school provision.

**9.0 CRIME AND DISORDER IMPLICATIONS**

9.1 There are no specific crime and disorder implications

**10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

10.1 The project is being managed under project management methodology and a risk log is held and reviewed at project board meetings. Of the main risks highlighted in this decision paper, the financial risk continues to be managed carefully. However a capital scheme will always carry some risk of not meeting the budget.

**11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

Appendix 1 – Copy of published notice and prescribed information

Appendix 2 – Summary of consultation responses

Appendix 3 – Guidance for decision makers

**12 BACKGROUND PAPERS**

12.1 None

## **Appendix 1**

## **Statutory notice**

### **LONDON BOROUGH OF MERTON**

#### **Expansion and Change of Age Range at Cricket Green Special School**

Notice is hereby given in accordance with Section 19 (1) of the Education and Inspections Act 2006 and the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 that the London Borough of Merton is proposing to lower the age range and increase the number of pupils at Cricket Green School, a maintained special school for pupils with additional complex and varied needs, Lower Green West, Mitcham, CR4 3AF from 1 September 2019.

The proposed change in age range would lower the age range at the school from 4-19 years old to 3-19 years old through the introduction of an 8 full time equivalent place nursery for children aged 3 and 4.

Cricket Green School presently has a capacity of 199 places aged 4-19 including 24 sixth form places and the proposal is to increase the capacity to 260, including nursery places. The current number on roll at the school is 183.

The London Borough of Merton will implement the proposals comprising of 8 FTE nursery, 70 primary age pupil places, 150 secondary age pupil places and 32 post-16 pupil places.

This notice is an extract of the complete proposal. Copies of the complete proposal can be viewed at <http://www.merton.gov.uk/schoolsconsultations.htm>

Alternatively you can request a printed copy of the complete proposal from the address below or telephone 020 8545 3289.

Within four weeks from the date of publication of these proposals, any person may object to, or make comment upon the proposals, by sending their representations to: Director of Children, Schools and Families (FAO: Tom Procter, Head of Contracts and School Organisation), London Borough of Merton, Civic Centre, London Road, Morden, SM4 5DX or by emailing:

[SchConsult@merton.gov.uk](mailto:SchConsult@merton.gov.uk)

A public meeting will be held at 6.30pm on Monday 12 March at Cricket Green School, Lower Green West, Mitcham, CR4 3AF.

Yvette Stanley  
Director of Children, Schools and Families  
London Borough of Merton  
Civic Centre  
London Road  
Morden SM4 5DX

Date: 1 March 2018

#### **Explanatory Notes**

Cricket Green is a special school for children with additional complex and varied needs.

The London Borough of Merton aims to decide whether to approve the proposals in April 2018. If the Council fails to determine the proposals within two months of the end of the representation period it will pass all relevant material to the Schools Adjudicator who will determine the proposals .

## Supplementary information

### Description of alteration;

The proposal is to lower the age range of Cricket Green School from 4-19 years old to 3-19 years old and to increase the pupil capacity from 199 to 260 places, with the 260 places comprising of 8 FTE nursery, 70 primary age pupil places, 150 secondary age pupil places and 32 post-16 pupil places.

### Evidence of demand

The council area has experienced a significant increase in the number of statements/EHCP (Education and Health Care Plans) over the past five years as illustrated by the table below.

Primary Need	Jan 2012 (Statements)		Jan 2017 (Statements and EHCPs)	
	No.	%	No.	%
ASD - Autistic Spectrum Disorder	221	24%	408	32%
MLD - Moderate Learning Difficulty	180	19%	253	20%
SLCN - Speech, Language and Communications Needs	214	23%	252	20%
SEMH - Social, Emotional and Mental Health	100	11%	132	10%
SLD - Severe Learning Difficulty	90	10%	109	9%
PD - Physical Disability	33	4%	43	3%
VI - Visual Impairment	28	3%	19	2%
SPLD - Specific Learning Difficulty	32	3%	18	1%
HI - Hearing Impairment	17	2%	14	1%
PMLD - Profound and Multiple Learning Difficulty	5	1%	8	1%
OTH - Other Difficulty/Disability	8	1%	5	0%
No Primary Need recorded	0	0%	3	0%
<b>Total</b>	<b>928</b>	<b>100%</b>	<b>1264</b>	<b>100%</b>

There is also a significant increase in the secondary age population over the next five years, which is the age that more children are identified to attend Cricket Green.

The school is now full in most year groups and SEN case officers have not been able to place all children at the school that are suitable for Cricket Green School. In particular, demand for placements for 2018 has shown the need for year 7 places is not containable within two classes. There is also an identified need to assess nursery children with SEN early to ensure appropriate school pathways.

### Objectives (including how the proposal would increase educational standards and parental choice)

The overall objective is to provide sufficient good quality local school places for children with SEN. Cricket Green School is rated "Outstanding" by Ofsted and has received this judgement in three consecutive Ofsted inspections - in 2010, 2013 and 2017.

The school provides value for money in being considerably less expensive to provide education than non-maintained provision and so meets the objective to provide suitable, high quality places to meet the growing number of SEN children.

This will be enabled by a physical extension to the school through a new two storey building to the rear of the site and other changes to ensure the school is fit for purpose with the following objectives:

- Additional 61 places, mostly for secondary but also including providing an assessment nursery and ensuring one extra class in primary
- Replacing a life expired mobile unit currently housing 3 classrooms
- A design that externally links the flow of buildings, makes best use of external space, and allows children to move safely around the site.
- Sufficient ancillary space including enlarged hall and office space to reflect the school will have doubled in size from 130 to 260 pupils over the past 10 years

### **The effect on other schools, academies and educational institutions within the area**

The expansion of Cricket Green School is to meet a growing demand so will not reduce the intake of neighbouring schools. There is generally a high demand compared to supply of SEN places.

### **Project costs and indication of how these will be met, including how long term value for money will be achieved**

The total project cost of the capital project is circa £5 million and is being met by Merton Council, with some formulaic government capital grant support. As described above, long term value for money is being achieved as Cricket Green is less expensive to provide education than non-maintained provision, especially when transport costs are taken into account, and so the objective is to ensure suitable, high quality places are provided to meet the growing number of SEN children.

### **Implementation and any proposed stages for implementation**

The official date for implementation of this proposal is September 2019, being the date that the main expansion building is programmed to be completed. However, the school is providing an extra class in April 2018 and further phases of the project will proceed in the autumn of 2019 and not be completed until spring 2020; the school will gradually expand to its new capacity as demand increases for sufficient extra classes.

### **A statement explaining the procedure for responses: support; objections and comments**

Responses should be provided within four weeks of the publication date of this proposal so by Thursday 29 March 2018 by email to [SchConsult@merton.gov.uk](mailto:SchConsult@merton.gov.uk) or by post to Director of Children, Schools and Families (FAO: Tom Procter, Head of Contracts and School Organisation), London Borough of Merton, Civic Centre, London Road, Morden, SM4 5DX

A public meeting will be held at 6.30pm on Monday 12 March at Cricket Green School, Lower Green West, Mitcham, CR4 3AF.

### Summary of consultation responses and notes of public meeting

#### **Expansion of Cricket Green School and Changes to Age Range**

#### **Consultation Responses**

#### **Responses received:**

Headteachers	2
Other local authorities	1
Parents	18 (includes 1 joint response from 15 parents)

#### **Responses**

1. Perseid School – governors support in principle the expansion of Cricket Green to meet the additional need. However they state that it is more important that Early Years SEND Support Workers are able to accurately and confidently signpost parents to the most appropriate nursery provision for their child. Perseid are happy to work with these works to support any development or training.
2. Headteacher from Merton Primary School – the expansion is an excellent proposal to provide an excellent education to Merton pupils and families.
3. Richmond & Wandsworth Council – the council supports this proposal which is in line with similar initiatives being taken in this borough to increase places for children with additional and complex needs.
4. Parent – Plans for the scheme look very good and is a positive way forward to ensure the ongoing success and support for the school. However have the following concerns: (i) Ensure the Health provide can provide the therapies and meet the needs of the existing and increased number of pupils. If not, funding needs to be addressed and perhaps the school can recruit direct. (ii) Potential future development of Worsfold House site – feel this should be incorporated into the school expansion plan. If not, concerned regarding increased traffic, privacy of pupils, and disruption caused to pupils during construction. (iii) Concerned re size of school grounds. Only a small piece of land has been added which is not enough for the needs of the pupils. (iv) Concerned no kitchens, life skills (Shed 13/art) areas haven't been proposed for the new secondary building. Existing kitchen is small and it would be better to have all secondary facilities in one area. (v) Concerned about number of parking spaces available for staff and parents, especially as more parents are having to take their children to school.
5. Parent – Has deep concerns and objects to the proposed expansion. (i) It will be the largest single site special needs school in the country and concerned regarding the lack of separation of children at primary level and children and young adults in post 16 level. (ii) Existing one way system with one entry and exit point is unsafe. Area is currently congested, chaotic and potentially dangerous at pick up and drop off.

Whilst a fenced car park is a good idea, it would impede any emergency services vehicles accessing the furthest buildings and an evacuation of buildings. (iii) Lack of recreational space and any dedicated play areas which will be detrimental to the children's wellbeing. Also has concerns not mentioned in the plan that no increase in the therapy facilities and qualified therapy staff has been mentioned. There needs to be a dedicated increase in budget to this. Overall regards the plans as ill-conceived with a short term view of providing special needs places. It will not be a better option for children who require smaller classes and calmer environments.

6. 15 x Parents – Have several concerns. (i) Reduction of open space would have a detrimental effect on the current and future children. Request the school grounds are increased behind block C. (ii) Worsfold House land – concerned regarding the narrowness of the access road if the site is redeveloped for housing. (iii) Traffic and parking which is already a major problem needs to be addressed as a potential health and safety risk. Request a more detailed breakdown of suggested parking arrangements with consideration given to the access road and any future development of Worsfold House. (iv) Effect of increased pupils and current pupil's access to health/therapy professionals. Request reassurance from Merton SEND department and Central London Community Healthcare NHS Trust that access will not be affected and staffing levels will increase to meet demand. Would like to be involved and consulted on any further developments and plans.
7. Parent – Has several concerns. (i) The reduction in play space plus additional pupils is detrimental to the children. The school will have increased by 69% from 2013 without the same % increase in land. Also, the recreational area is next to an academic block and if usage was staggered due to the numbers of pupils it could accommodate, it would be in almost continuous use which is an inadequate solution. The additional council owned land at Worsfold House should be allocated to the school rather than a housing development. (ii) Current access and egress already difficult and will only get worse with more pupils. (iii) Disruption to the pupils during the building works. This should not be underestimated so it is imperative that as much of the building work is undertaken during the holidays. Am fully supportive in principle of the expansion however the plans must be fit for purpose and the current lack of land means they do not.

## **Cricket Green expansion proposal - Notes of public meeting, 12 March 2018**

The meeting was attended by approximately 12 parents and governors and two pupils, with presentations by Celia Dawson, Headteacher of Cricket Green School and Tom Procter, Head of School Organisation, Merton Council

Celia Dawson introduced the meeting, explaining the positive development of the school in her 17 years – at this time it was threatened with closure but the school has continued to evolve with growth in numbers and an increase in the site and buildings.

This was now an opportunity to provide a purpose built new building, and consider how the previous growth can fit together.

Tom Procter spoke through a PowerPoint presentation that showed:

- The recent growth in SEN numbers
- The particular growth in ASD and MLD
- The previous expansion
- The strategic work on SEN planning currently being developed but the need to provide additional places at Cricket green as soon as possible
- The proposal in terms of pupil number growth
- The building plans

This promoted questions and answers with the following points raised by parents and governors:

- A request to show the present capacity and numbers by age phase compared to the present so that the proposed growth could be more clearly seen \*
- A request to show the more detailed floor layouts so the building changes could be appreciated, including for parents that could not attend the meeting \*
- Concern that the additional site area was small given the size of the school expansion, and questioning whether more of the Worsfold House land could be transferred to the school, especially if there was a future intention that it could be housing with the related traffic implications from this
- Reassurance provided that the construction works would be managed safely for children and staff, with a detailed plan to be developed to ensure this, with appropriate separation between construction works and pupils – access to be through the rear of the site
- Concern about whether the increase in pupil numbers could impact on the availability of therapy, and impact on the school budget generally
- Questions regarding the sufficiency of on-site parking

(\* This information is now included in a revised PowerPoint to be sent to parents)





Department  
for Education

# **Guidance for decision-makers**

**Statutory guidance for decision-makers  
deciding prescribed alteration and  
establishment and discontinuance  
proposals**

**April 2016**

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# 1: Summary

## About this guidance

This is statutory guidance from the Department for Education. This means that recipients must have regard to it when carrying out duties relating to making decisions about prescribed alteration proposals and establishment (opening) and discontinuance (closure) proposals.

This guidance should be read in conjunction with; 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; the School Organisation (Establishment and Discontinuance of Schools) Regulations 2013 and the School Organisation (Removal of Foundation, Reduction in the Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations (2007).

## Review date

This guidance will be reviewed in April 2017.

## Who is this guidance for?

This guidance is for those making decisions about prescribed alteration proposals (LAs, the Schools Adjudicator and governing bodies), and opening and closing maintained schools (LAs, the Schools Adjudicator) and for information purposes for those affected by such proposals (dioceses, trustees, parents etc.)

It is the responsibility of LAs and governing bodies to ensure that they act in accordance with the relevant legislation when making changes to or opening or closing a maintained school and they are advised to seek independent legal advice where appropriate.

## Main points

- The decision-maker will need to be satisfied that the appropriate fair and open local consultation and/or representation period has been carried out and that the proposer has given full consideration to all the responses received. The decision-maker must consider the views of those affected by a proposal or who have an interest in it, including cross-LA border interests. The decision-maker should not simply take account of the numbers of people expressing a particular view. Instead, they should give the greatest weight to responses from those stakeholders likely to be most directly affected by a proposal – especially parents of children at the affected school(s).

- If the proposer has failed to meet the statutory requirements, a proposal may be deemed invalid and therefore should be rejected. The decision-maker must consider **ALL** the views submitted, including all support for, objections to and comments on the proposal.
- When deciding on a proposal, decision-makers will need to consider whether the new provision is genuinely a change to an existing school or is in effect a new school which should have triggered the free school presumption.
- The 2016 White Paper [Education Excellence Everywhere](#), sets out the department's aim that by the end of 2020, all schools will be academies or in the process of becoming academies. The decision-maker should, therefore, take into account the extent to which the proposal is consistent with this policy.
- In determining proposals decision-makers must ensure that the guidance on [schools causing concern](#) (Intervening in falling, underperforming and coasting schools) has been followed where necessary.
- All decisions in relation to the opening and closing of a maintained school should be copied to the Secretary of State, within one week of the decision being made. The notification must be sent to [schoolorganisation.notifications@education.gsi.gov.uk](mailto:schoolorganisation.notifications@education.gsi.gov.uk). The necessary amendments will then be made to the EduBase system.

## 2: Factors relevant to all types of proposals

### Related proposals

Any proposal that is 'related' to another proposal must be considered together. A proposal should be regarded as 'related' if its implementation (or non-implementation) would prevent or undermine the effective implementation of another proposal. Decisions for 'related' proposals should be compatible.

Where a proposal is 'related' to another proposal to be decided by the [Regional Schools Commissioner](#) (RSC) (e.g. for the [establishment of a new free school established under the presumption route](#)) the decision-maker should defer taking a decision until the RSC has taken a decision on the proposal, or where appropriate, grant a conditional approval for the proposal.

### Conditional approval

Decision-makers may give conditional approval for a proposal subject to certain prescribed events<sup>1</sup>. The decision-maker must set a date by which the condition should be met but can modify the date if the proposer confirms, before the date expires, that the condition will be met later than originally thought.

The proposer should inform the decision-maker (and the Secretary of State via [schoolorganisation.notifications@education.gsi.gov.uk](mailto:schoolorganisation.notifications@education.gsi.gov.uk) for school opening or closure cases) when a condition is modified or met. If a condition is not met by the date specified, the proposal should be referred back to the decision-maker for fresh consideration.

### Publishing decisions

All decisions (rejected and approved – with or without modifications) must give reasons for such a decision being made. **Within one week** of making a decision the decision-maker should arrange (via the proposer as necessary) for the decision and the reasons behind it to be published on the website where the original proposal was published. The decision-maker must also arrange for the organisations below to be notified of the decision and reasons<sup>2</sup>:

- the LA (where the [Schools Adjudicator](#) or governing body is the decision-maker);
- the governing body/proposers (as appropriate);

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<sup>1</sup> under paragraph 8 of Schedule 3 to the Prescribed Alterations Regulations (for prescribed alterations), regulation 16 of the Establishment and Discontinuance Regulations (for closures and new schools) and paragraph 16 of Schedule 1 to the Prescribed Alterations Regulations (for foundation and trust proposals).

<sup>2</sup> In the case of proposals to change category to foundation, acquire / remove a Trust and / or acquire / remove a Foundation majority the only bodies the decision-maker must notify are the LA and the governing body (where the Schools Adjudicator is the decision-maker).

- the trustees of the school (if any);
- the local Church of England diocese;
- the local Roman Catholic diocese;
- for a special school, the parents of every registered pupil at the school;
- any other organisation that they think is appropriate; and
- the Secretary of State via [schoolorganisation.notifications@education.gsi.gov.uk](mailto:schoolorganisation.notifications@education.gsi.gov.uk) (in school opening and closure cases only).

## Consideration of consultation and representation period

The decision-maker will need to be satisfied that the appropriate fair and open local consultation and/or representation period has been carried out and that the proposer has given full consideration to all the responses received. If the proposer has failed to meet the statutory requirements, a proposal may be deemed invalid and therefore should be rejected. The decision-maker must consider **ALL** the views submitted, including all support for, objections to and comments on the proposal.

## Education standards and diversity of provision

Decision-makers should consider the quality and diversity of schools in the relevant area and whether the proposal will meet or affect the needs of parents; raise local standards and narrow attainment gaps.

## A school-led system with every school an academy,

The 2016 White Paper [Education Excellence Everywhere](#), sets out the department's aim that by the end of 2020, all schools will be academies or in the process of becoming academies. The decision-maker should, therefore, take into account the extent to which the proposal is consistent with this policy.

## Demand v need

Where a LA identifies the need for a new school, to meet basic need, section 6A of EIA 2006 places the LA under a duty to seek proposals to establish a free school via the '[free school presumption](#)'. However it is still possible to publish proposals for new maintained school outside of the competitive arrangements, at any time, in order to meet demand for a specific type of place e.g. places to meet demand from those of a particular faith.

In assessing the demand for new school places the decision-maker should consider the evidence presented for any projected increase in pupil population (such as planned

housing developments) and any new provision opening in the area (including free schools).

The decision-maker should take into account the quality and popularity of the schools in which spare capacity exists and evidence of parents' aspirations for a new school or for places in a school proposed for expansion. The existence of surplus capacity in neighbouring less popular schools should not in itself prevent the addition of new places.

Reducing surplus places is not a priority (unless running at very high levels). For parental choice to work effectively there may be some surplus capacity in the system as a whole. Competition from additional schools and places in the system will lead to pressure on existing schools to improve standards.

## School size

Decision-makers should not make blanket assumptions that schools should be of a certain size to be good schools, although the viability and cost-effectiveness of a proposal is an important factor for consideration. The decision-maker should also consider the impact on the LA's budget of the need to provide additional funding to a small school to compensate for its size.

## Proposed admission arrangements

In assessing demand the decision-maker should consider all expected admission applications, not only those from the area of the LA in which the school is situated.

Before approving a proposal that is likely to affect admissions to the school the decision-maker should confirm that the admission arrangements of the school are compliant with the [School Admissions Code](#). Although the decision-maker cannot modify proposed admission arrangements, the decision-maker should inform the proposer where arrangements seem unsatisfactory and the admission authority should be given the opportunity to revise them.

## National Curriculum

All maintained schools must follow the [National Curriculum](#) unless they have secured an exemption for groups of pupils or the school community<sup>3</sup>.

## Equal opportunity issues

The decision-maker must have regard to the Public Sector Equality Duty (PSED) of LAs/governing bodies, which requires them to have 'due regard' to the need to:

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<sup>3</sup> Under sections: 90, 91,92 and 93 of the of the Education Act 2002.



- eliminate discrimination;
- advance equality of opportunity; and
- foster good relations.

The decision-maker should consider whether there are any sex, race or disability discrimination issues that arise from the changes being proposed, for example that where there is a proposed change to single sex provision in an area, there is equal access to single sex provision for the other sex to meet parental demand. Similarly there should be a commitment to provide access to a range of opportunities which reflect the ethnic and cultural mix of the area, while ensuring that such opportunities are open to all.

## Community cohesion

Schools have a key part to play in providing opportunities for young people from different backgrounds to learn with, from and about each other; by encouraging, through their teaching, an understanding of, and respect for, other cultures, faiths and communities. When considering a proposal, the decision-maker must consider its impact on community cohesion. This will need to be considered on a case-by-case basis, taking account of the community served by the school and the views of different sections within the community.

## Travel and accessibility

Decision-makers should satisfy themselves that accessibility planning has been properly taken into account and the proposed changes should not adversely impact on disadvantaged groups.

The decision-maker should bear in mind that a proposal should not unreasonably extend journey times or increase transport costs, or result in too many children being prevented from travelling sustainably due to unsuitable walking or cycling routes.

A proposal should also be considered on the basis of how it will support and contribute to the LA's duty to promote the use of sustainable travel and transport to school.

Further information is available in the statutory [Home to school travel and transport guidance](#) for LAs.

## Funding

The decision-maker should be satisfied that any land, premises or necessary funding required to implement the proposal will be available and that all relevant local parties (e.g. trustees or religious authority) have given their agreement. A proposal **cannot** be approved conditionally upon funding being made available.

Where proposers are relying on the department as the source of capital funding, there can be no assumption that the approval of a proposal will trigger the release of capital

funds from the department, unless the department has previously confirmed in writing that such resources will be available; nor can any allocation 'in principle' be increased. In such circumstances the proposal should be rejected, or consideration deferred until it is clear that the capital necessary to implement the proposal will be provided.

## **School premises and playing fields**

Under the School Premises Regulations all schools are required to provide suitable outdoor space in order to enable physical education to be provided to pupils in accordance with the school curriculum; and for pupils to play outside safely.

[Guidelines](#) setting out suggested areas for pitches and games courts are in place although the department has been clear that these are non-statutory.

### 3: Factors relevant to prescribed alteration proposals:

#### Enlargement of premises

When deciding on a proposal for an expansion on to an additional site (a ‘satellite school’), decision-makers will need to consider whether the new provision is genuinely a change to an existing school or is in effect a new school (which would trigger the free school presumption in circumstances where there is a need for a new school in the area<sup>4</sup>).

Decisions will need to be taken on a case-by-case basis, but decision-makers will need to consider the following non-exhaustive list of factors which are intended to expose the extent to which the new site is integrated with the existing site, and to ensure that it will serve the same community as the existing site:

- **The reasons for the expansion**
  - What is the rationale for this approach and this particular site?
- **Admission and curriculum arrangements**
  - How will the new site be used (e.g. which age groups/pupils will it serve)?
  - What will the admission arrangements be?
  - Will there be movement of pupils between sites?
- **Governance and administration**
  - How will whole school activities be managed?
  - Will staff be employed on contracts to work on both sites? How frequently will they do so?
  - What governance, leadership and management arrangements will be put in place to oversee the new site (e.g. will the new site be governed by the same governing body and the same school leadership team)?
- **Physical characteristics of the school**
  - How will facilities across the two sites be used (e.g. sharing of the facilities and resources available at the two sites, such as playing fields)?
  - Is the new site in an area that is easily accessible to the community that the current school serves?

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<sup>4</sup> Or require an proposal under section 11 of the EIA 2006 for a new maintained school.

## Expansion of existing grammar schools

Legislation prohibits the establishment of new grammar schools<sup>5</sup>. Expansion of any existing grammar school onto a satellite site can only happen if it is a genuine continuance of the same school. Decision-makers must consider the factors listed above when deciding if an expansion is a legitimate enlargement of an existing school.

## Changes to boarding provision

In making a decision on a proposal to close a school that has boarding provision, or to remove boarding provision from a school that is not closing, the decision-maker should consider whether there is a state maintained boarding school within reasonable distance from the school. The decision-maker should consider whether there are satisfactory alternative boarding arrangements for those currently in the school and those who may need boarding places in the foreseeable future, including the children of service families.

## Addition of post-16 provision

The department expects that only schools that are rated as 'good' or 'outstanding' will seek to add a sixth form.

In assessing a proposal to add post-16 provision, decision-makers should look for evidence that the proposal will improve, extend the range, and increase participation in high quality educational or training opportunities for post-16 pupils within the LA or local area.

The decision-maker should look for evidence on how new places will fit within the 16-19 organisation in an area and that schools have collaborated with other local providers in drawing up a proposal.

The decision-maker may turn down a proposal to add post-16 provision if there is compelling and objective evidence that the expansion would undermine the viability, given the lagged funding arrangements, of an existing high quality post-16 provider.

Decision-makers should consider the viability of a proposal bearing in mind the formulaic approach to funding; that the school will have to bear any potential diseconomies of scale; and the impact of future demographic trends.

A proposal should take account of the timeline for agreeing 16-19 funding which will be available in the most recent guidance on the department's website. Decision-makers should note that post-16 funding runs on an August – July academic year cycle.

In deciding whether new sixth-form provision would be appropriate, proposers and decision makers should also consider the following guidelines:

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<sup>5</sup> Except where a grammar school is replacing one of more existing grammar schools.

- the quality of pre-16 education must be good or outstanding;
- the proposed sixth-form will provide places for a minimum of 200 students;
- the proposed sixth-form will, either directly or through partnership, offer a minimum of 15 A level subjects:
- there is a clear demand for the new sixth-form (including evidence of a shortage of post-16 places and a consideration of the quality of L3 provision in the area);
- the proposed sixth-form is financially viable (there is evidence of financial resilience should student numbers fall and the proposal will not impact negatively on 11-16 education or cross subsidisation of funding).

## **Changes of category to voluntary-aided**

For a proposal to change the category of a school to voluntary-aided, the decision-maker must be satisfied that the governing body and/or the foundation are able and willing to meet their financial responsibilities for building work. The decision-maker may wish to consider whether the governing body has access to sufficient funds to enable it to meet 10% of its capital expenditure for at least five years from the date of implementation, taking into account anticipated building projects.

## **Changes to special educational need provision**

In planning and commissioning SEN provision or considering a proposal for change, LAs should aim for a flexible range of provision and support that can respond to the needs of individual pupils and parental preferences. This is favourable to establishing broad categories of provision according to special educational need or disability. Decision-makers should ensure that proposals:

- take account of parental preferences for particular styles of provision or education settings;
- take account of any relevant local offer for children and young people with SEN and disabilities and the views expressed on it;
- offer a range of provision to respond to the needs of individual children and young people, taking account of collaborative arrangements (including between special and mainstream), extended school and Children's Centre provision; regional centres (of expertise) and regional and sub-regional provision; out of LA day and residential special provision;

- take full account of educational considerations, in particular the need to ensure a broad and balanced curriculum, within a learning environment where children can be healthy and stay safe;
- support the LA's strategy for making schools and settings more accessible to disabled children and young people and their scheme for promoting equality of opportunity for disabled people;
- provide access to appropriately trained staff and access to specialist support and advice, so that individual pupils can have the fullest possible opportunities to make progress in their learning and participate in their school and community;
- ensure appropriate provision for 14-19 year-olds; and
- ensure that appropriate full-time education will be available to all displaced pupils. Their statements of special educational needs must be amended and all parental rights must be ensured. Other interested partners, such as the Health Authority should be involved. Pupils should not be placed long-term or permanently in a Pupil Referral Unit (PRU) if a special school place is what they need.

When considering any reorganisation of provision that the LA considers to be reserved for pupils with special educational needs, including that which might lead to children being displaced, proposers will need to demonstrate how the proposed alternative arrangements are likely to lead to improvements in the standard, quality and/or range of educational provision for those children. Decision-makers should make clear how they are satisfied that this SEN improvement test has been met, including how they have taken account of parental or independent representations which question the proposer's assessment.

## 4: Factors relevant to establishment proposals

### Suitability

When considering a proposal for a new maintained school, the decision-maker should consider each proposal on its merits, and take into account all matters relevant to the proposal. Any proposals put forward by organisations which advocate violence or other illegal activity must be rejected. In order to be approved, a proposal should demonstrate that, as part of a broad and balanced curriculum, they would promote the spiritual, moral, cultural, mental and physical development of pupils at the school and of society, as set out in the department's guidance on [Promoting fundamental British values through SMSC](#).

### The free school presumption

Where a LA considers that there is a need for a new school in its area, to address basic need, it must first seek proposals to [establish a free school](#) under section 6A of EIA 2006. In such cases the Regional Schools Commissioner (RSC) is the decision-maker.

### New schools through a competition

Where no academy/free school proposals are received (or are received but are deemed unsuitable) a statutory competition under section 7 of EIA 2006 may be held.

Where two or more proposals are complementary, and together meet the requirements for the new school, the decision-maker may approve all the proposals.

The specification for the new school is only the minimum requirement; a proposal may go beyond this. Where a proposal is not in line with the specification, the decision-maker must consider the potential impact of the difference to the specification.

Where additional provision is proposed (e.g. early years or a sixth-form) the decision-maker should first judge the merits of the main proposal against the others. If the proposal is judged to be superior, the decision-maker should consider the additional elements and whether they should be approved. If the decision-maker considers they cannot be approved, they may consider a modification to the proposal, but will need to first consult the proposers and - if the proposal includes provision for 14-19 year olds - the Education Funding Agency (EFA).

For competitions, the LA will be expected to provide premises and meet the capital costs of implementing the winning proposal, and must include a statement to this effect in the notice inviting proposals. Where the estimated premises requirements and/or capital costs of a proposal submitted in response to a competition exceed the initial cost estimate made by the LA, the decision-maker should consider the reasons for the

additional requirements and/or costs, as set out in the proposal and whether there is agreement to their provision.

## **New schools outside competition**

Section's 10 and 11 of the EIA 2006 permits proposals to establish new schools under certain conditions either with the Secretary of States consent (section 10 cases) or without (section 11 cases).

In all cases proposals must have followed the required statutory process and may be for a school with or without a designated religious character.

## **Independent faith schools joining the maintained sector**

The department expects that independent schools wishing to join the maintained sector will do so through the new free schools route.

However if a proposal is made, through the statutory process to establish a new voluntary school, , decision-makers must ensure that the decision to proceed with such a proposal is clearly based on value for money and that the school is able to meet the high standards expected of state-funded educational provision. The department would expect the decision-maker to consider the following points:

- that there is genuine demand/need for this type of school place in the local community;
- that the current and projected financial health of the proposer is strong;
- that the proposal represents long term value for money for the taxpayer;
- that the school will be able to deliver the whole of the national curriculum to the expected high standard;
- that all aspects of due diligence have been considered and undertaken; and
- that the school building is appropriate for the delivery of a high standard of education and in good condition throughout, or can easily be improved to meet such standards.
- In the case of a new VC school the independent school must have existed for at least two years and must close before the new maintained school opens.

If the proposal is approved a separate [application for religious designation](#) would need to be made to the department.



## 5: Factors relevant to discontinuance (closure) proposals

### Closure proposals (under s15 EIA 2006)

The decision-maker should be satisfied that there is sufficient capacity to accommodate displaced pupils in the area, taking into account the overall quality of provision, the likely supply and future demand for places. The decision-maker should consider the popularity with parents of the schools in which spare capacity exists and evidence of parents' aspirations for those schools.

### Schools to be replaced by a more successful/popular school

Such proposals should normally be approved, subject to evidence provided.

### Schools causing concern

In determining proposals decision-makers must ensure that the guidance on [schools causing concern](#) (Intervening in falling, underperforming and coasting schools) has been followed where necessary.

### Rural schools and the presumption against closure

There is a [presumption against the closure of rural schools](#). This does not mean that a rural school will never close, but the case for closure should be strong and the proposal clearly in the best interests of educational provision in the area<sup>6</sup>. Those proposing closure should provide evidence to show that they have carefully considered the following:

- alternatives to closure including the potential for federation with another local school or conversion to academy status and joining a multi-academy trust or umbrella trust to increase the school's viability;
- the scope for an extended school to provide local community services; and facilities e.g. child care facilities, family and adult learning, healthcare, community internet access etc.;
- the transport implications; and
- the overall and long term impact on local people and the community of closure of the village school and of the loss of the building as a community facility.

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<sup>6</sup> Not applicable where a rural infant and junior school on the same site are closing to establish a new primary school on the same site(s).

When deciding a proposal for the closure of a rural primary school the decision-maker must refer to the [Designation of Rural Primary Schools Order](#) to confirm that the school is a rural school.

For *secondary schools*, the decision-maker must decide whether a school is to be regarded as rural for the purpose of considering a proposal. In doing so the decision-maker should have regard to the department's register of schools – EduBase<sup>7</sup> which includes a rural/urban indicator for each school in England. Where a school is not recorded as rural on Edubase, the decision-maker can consider evidence provided by interested parties, that a particular school should be regarded as rural.

## Early years provision

In considering a proposal to close a school which currently includes early years provision, the decision-maker should consider whether the alternative provision will integrate pre-school education with childcare services and/or with other services for young children and their families; and should have particular regard to the views of the Early Years Development and Childcare Partnership.

The decision-maker should also consider whether the new, alternative/extended early year's provision will maintain or enhance the standard of educational provision for early years and flexibility of access for parents. Alternative provision could be with providers in the private, voluntary or independent sector.

## Nursery schools and the presumption against closure

There is a presumption against the closure of nursery schools. This does not mean that a nursery school will never close, but the case for closure should be strong and the proposal must demonstrate that:

- plans to develop alternative provision clearly demonstrate that it will be at least as equal in terms of the quantity as the provision provided by the nursery school with no loss of expertise and specialism; and
- replacement provision is more accessible and more convenient for local parents.

## Balance of denominational provision

In deciding a proposal to close a school that has been designated with a religious character, decision-makers should consider the effect that this will have on the balance of denominational provision in the area.

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<sup>7</sup> Any school classed as urban will have a rural/urban indicator of either 'Urban>10K – less sparse' or 'Urban>10K – sparse' – all other descriptions refer to rural schools.

The decision-maker should not normally approve the closure of a school with a religious character where the proposal would result in a reduction in the proportion of relevant denominational places in the area. However, this guidance does not apply in cases where the school concerned is severely under-subscribed, standards have been consistently low or where an infant and junior school (at least one of which has a religious character) are to be replaced by a new all-through primary school with the same religious character on the site of one or both of the predecessor schools.

## **Community Services**

Some schools may be a focal point for family and community activity, providing extended services for a range of users, and its closure may have wider social consequences. The effect on families and the community should be considered when considering proposals about the closure of such schools. Where the school is providing access to extended services, provision should be made for the pupils and their families to access similar services through their new schools or other means.

## 6: Factors relevant to proposals to change category to foundation

This section includes proposals to change category to foundation, acquire/remove a Trust and acquire/remove a foundation majority governing body.

It is the department's view that governing bodies should convert to academy status rather than change category to a foundation. Governing bodies wishing to discuss this issue should email [schoolorganisation.notifications@education.gsi.gov.uk](mailto:schoolorganisation.notifications@education.gsi.gov.uk) and a member of the school organisation team will contact them to discuss the proposed change of category.

### Standards

Decision Makers should consider the impact of changing category to foundation and acquiring or removing a Trust on educational standards at the school. Factors to consider include:

- the impact of the proposals on the quality, range and diversity of educational provision in the school;
- the impact of the proposals on the curriculum offered by the school, including, if appropriate, the development of the school's specialism;
- the experience and track record of the Trust members, including any educational experience and expertise of the proposed trustees;
- how the Trust might raise / has raised pupils' aspirations and contributes to the ethos and culture of the school;
- whether and how the proposals advance / have advanced national and local transformation strategies;
- the particular expertise and background of Trust members. For example, a school seeking to better prepare its pupils for higher education might have a higher education institution as a partner.

In assessing standards at the school, the decision-maker should take account of recent reports from Ofsted or other inspectorates and a range of performance data. Recent trends in applications for places at the school (as a measure of popularity) and the local reputation of the school may also be relevant context for a decision.

if a proposal is not considered strong enough to significantly improve standards at a school that requires it, the decision maker should consider rejecting the proposal.

## Community Cohesion

Trusts have a duty<sup>8</sup> to promote [community cohesion](#), and decision-maker should carefully consider the Trust's plans for partnership working with other schools, agencies or voluntary bodies.

## New Trust schools Acquiring a Trust

For new Trust schools (foundation schools with a charitable foundation) the decision-maker must be satisfied that the following criteria are met for the proposal to be approved:

- the proposal is not seeking for a school to alter, acquire or lose a designated religious character. These alterations cannot be made simply by acquiring a Trust;
- the necessary work is underway to establish the Trust as a charity and as a corporate body; and
- that none of the trustees are disqualified from exercising the function of trustee, either by virtue of:
  - disqualifications under company or charity law;
  - disqualifications from working with children or young people;
  - not having obtained a criminal record check certificate<sup>9</sup>; or
  - the Requirements Regulations which disqualify certain persons from acting as charity trustees.

## Adding or removing a Trust

Decision-makers should consider the following factors for proposals to add or remove a Trust:

- whether the Trust acts as the Trust for any other schools and / or any of the members are already part of an existing Trust;
- if the proposed Trust partners already have a relationship with the school or other schools, how those schools perform (although the absence of a track record should not in itself be grounds for regarding proposals less favourably);
- how the partners propose to identify and appoint governors. What, if any, support would the Trust/foundation give to governors?

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<sup>8</sup> Under section 23(A)6 of the EIA 2006

<sup>9</sup> Under section 113A of the Police Act 1997

- to what extent the proposed Trust partners have knowledge of the local community and the specific needs of the school/area and to what extent the proposal addresses these; and
- the particular expertise and background of Trust members.

If a proposal is for the removal of a Trust, the governing body should consider the proposal in the context of the original proposal to acquire the Trust, and consider whether the Trust has fulfilled its expectations. Where new information has come to light regarding the suitability of Trust partners, this should be considered.

## Suitability of partners

Decision-makers will need to be satisfied of the suitability of Trust partners and members. They should use their own discretion and judgement in determining on a case-by-case basis what circumstances might prevent the reputation of a Trust partner being in keeping with the charitable objectives of a Trust, or could bring the school into disrepute. However, the decision-maker should seek to come to a balanced judgement, considering the suitability and reputation of the current/potential Trust. Decision-makers should seek to assure themselves that:

- the Trust members and proposed trustees (where the trustees are specified in the proposals) are not involved in illegal activities and/or activities which could bring the school into disrepute;
- the Trust partners are not involved in activities that may be considered inappropriate for children and young people (e.g. tobacco, gambling, adult entertainment, alcohol).

The following sources may provide information on the history of potential Trust partners:

- [The Health and Safety Executive Public Register of Convictions](#)<sup>10</sup>;
- [The Charity Commission's Register of Charities](#); and
- [The Companies House web check service](#).

## Removing a Trust / foundation majority

### Land and Assets

When removing a Trust, the governing body is required to resolve all issues relating to land and assets before the publication of proposals, including any consideration or

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<sup>10</sup> Appearance on this database should not automatically disqualify a potential Trust member; decision-makers will wish to consider each case on its merits

compensation that may be due to any of the parties. Where the parties cannot agree, the issues may be referred to the Schools Adjudicator to determine.

The Schools Adjudicator will take account of a governing body's ability to pay when determining any compensation. Therefore, all of these issues must be resolved by the point at which the decision is made and the amount of compensation due to either party may be a factor in deciding proposals to remove a Trust.

## **Finance**

Trusts are under no obligation to provide financial assistance to a school, but there may be instances where the Trust does provide investment. The well-being and educational opportunities of pupils at the school should be paramount, and no governing body should feel financial obligations prevent the removal of a Trust where this is in the best interests of pupils and parents.

## **Other services provided by the Trust**

Trusts may offer a variety of services to the school, such as careers advice, work experience placements, strategic partnerships with other schools, access to higher education resources and so on. The damage to relationships and/or loss of any of these advantages should be weighed up against the improvements envisaged by a change in governance or the removal of the Trust.

## Annex A: Further Information

- [The Education and Inspections Act 2006](#), as amended by the [Education Act 2011](#)
- [The School Standards and Framework Act 1998](#), as amended by the [Education Act 2002](#)
- [The School Organisation \(Prescribed Alterations to Maintained Schools\) \(England\) Regulations 2013](#)
- [The School Organisation \(Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts\) \(England\) Regulations 2007](#)
- [The School Organisation \(Requirements as to Foundations\) \(England\) Regulations 2007](#)
- [Academy/Free School Presumption – departmental advice \(2013\)](#)
- [Establishing New Maintained Schools – departmental advice for local authorities and new school proposers \(2013\)](#).
- [The Schools Admissions Code](#)
- [Education Excellence Everywhere](#)
- [White paper - Education Excellence Everywhere](#)
- [Schools Adjudicator](#)
- [Free school presumption](#)
- [School Admissions Code](#)
- [National Curriculum](#)
- [Home to school travel and transport guidance](#)
- [School land and property: protection, transfer and disposal](#)
- [Promoting fundamental British values through SMSC.](#)
- [Religious designation](#)
- [Schools causing concern](#)
- [Presumption against the closure of rural schools.](#)
- [The Health and Safety Executive Public Register of Convictions:](#)
- [The Charity Commission’s Register of Charities;](#) and
- [The Companies House web check service.](#)





Department  
for Education

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## Merton Council - call-in request form

### 1. Decision to be called in: (required)

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### 2. Which of the principles of decision making in Article 13 of the constitution has not been applied? (required)

Required by part 4E Section 16(c)(a)(ii) of the constitution - tick all that apply:

(a) proportionality (i.e. the action must be proportionate to the desired outcome);	
(b) due consultation and the taking of professional advice from officers;	
(c) respect for human rights and equalities;	
(d) a presumption in favour of openness;	
(e) clarity of aims and desired outcomes;	
(f) consideration and evaluation of alternatives;	
(g) irrelevant matters must be ignored.	

### 3. Desired outcome

Part 4E Section 16(f) of the constitution- select one:

(a) The Panel/Commission to refer the decision back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns.	
(b) To refer the matter to full Council where the Commission/Panel determines that the decision is contrary to the Policy and/or Budget Framework	
(c) The Panel/Commission to decide not to refer the matter back to the decision making person or body *	
* If you select (c) please explain the purpose of calling in the decision.	

**4. Evidence which demonstrates the alleged breach(es) indicated in 2 above (required)**

Required by part 4E Section 16(c)(a)(ii) of the constitution:

**5. Documents requested**

**6. Witnesses requested**

**7. Signed (not required if sent by email): .....**

**8. Notes – see part 4E section 16 of the constitution**

Call-ins must be supported by at least three members of the Council.

The call in form and supporting requests must be received by 12 Noon on the third working day following the publication of the decision.

The form and/or supporting requests must be sent:

- **EITHER** by email from a Councillor’s email account (no signature required) to [democratic.services@merton.gov.uk](mailto:democratic.services@merton.gov.uk)
- **OR** as a signed paper copy to the Head of Democracy Services, 7<sup>th</sup> floor, Civic Centre, London Road, Morden SM4 5DX.

For further information or advice contact the Head of Democracy Services on

020 8545 3864