

## **CABINET**

**17 DECEMBER 2019**

### **OUTCOMES OF STATUTORY CONSULTATION FOR THE PROPOSED PRESCRIBED ALTERATIONS AT ST. NICHOLAS CHURCH OF ENGLAND (VC) INFANT SCHOOL**

Portfolio Holders:	Councillor Josie Iles, Portfolio Holder for Children's Services (Lead Member) Councillor Martin Potter, Portfolio Holder for Education and Schools
Report from:	Ian Sutherland, Director of People - Children and Adults Services
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#### **Summary**

This report outlines the outcomes of the formal consultation (statutory representation) period on the Council's proposal to change St Nicholas CE Infant School from an infant to a primary school, by way of statutory prescribed alteration.

The Children and Young People Overview and Scrutiny Committee considered this report on 3 October 2019. The comments of this Committee are set out in section 6 of the report.

#### **1. Budget and policy framework**

- 1.1. The proposals to make a prescribed alteration to St Nicholas CE Infant School is consistent with the provisions of the School Place Planning Strategy 2018-22, and with the Council Plan outcome of 'All children achieving their potential in schools' and are within budget. Therefore this is a matter for the Cabinet.

#### **2. Background**

- 2.1. St Nicholas CE Infant School is currently a PAN 40 voluntary controlled infant school, providing early years and key stage 1 education for up to 120 children age 4-7 in the Strood area. The school is rated as Outstanding by Ofsted and is popular with parents.
- 2.2. When the children transfer to Junior School for key stage 2, they generally move to Gordon Junior School a short distance away. Gordon Junior School is not a faith school and some parents would prefer the option of continuing

their child's education at a Church of England School. The pupils are only able to choose an alternative junior school if places are available in nearby primary schools.

- 2.3. By St Nicholas becoming a through primary school, the children will be able to stay at the school for their primary education, reducing transition and enhancing outcomes through continuity of education. Should the proposals be approved, the school, when full, would cater for 210 children aged 4-11.
- 2.4. On the 15 January 2019, under decision number 4/2019, the Cabinet agreed to authorise the Director of People - Children and Adults Services commence a period of informal consultation for the proposed change to St Nicholas Infant School.
- 2.5. The first stage in the process comprised of a five week informal public consultation, this took place over a five week period between 28 January and 3 March 2019, and the results of this were set out in a Cabinet paper on 11 June 2019:  
(<https://democracy.medway.gov.uk/mgconvert2pdf.aspx?id=47600>).
- 2.6. At the Cabinet meeting on 11 June 2019, under decision number 67/2019, the Cabinet authorised the Director of People - Children and Adults Services to commence the formal consultation stage of the statutory process. This took place over a four-week period between 24 June and 21 July 2019. The results of this formal consultation are set out in section 4 of this paper.
- 2.7. At the same meeting, under decision number 68/2019, the Cabinet agreed to delegate authority to the Director of People - Children and Adults Services, in consultation with the Portfolio Holders for Children's Services (Lead Member) and Education and Schools, to determine whether to approve the proposals at the end of the statutory representation period if no objections are received. However, as an objection has been received, the proposal must now be determined by cabinet.
- 2.8. The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 Schedule 3 paragraph 5 legislates that the determination of the proposals must be made within two months of the end of the statutory representation period. The Statutory representation period ended on 21 July 2019.
- 2.9. The original timetable of the process was established on the understanding that the Children and Young People Overview and Scrutiny Committee (CYP O&S) would not be requesting to view the report pre decision. However, following the receipt of an objection it was decided that the report should be presented to the Overview and Scrutiny Committee for comment.
- 2.10. As the next CYP O&S Committee meeting was not until 3 October 2019, it meant that the next available Cabinet meeting would have been 22 October 2019, therefore exceeding the timeframe. As the timeframe is set in law, it cannot be extended, and in such circumstances the decision making reverts to the Office of the Schools Adjudicator (OSA).

- 2.11. Therefore, comments made by the CYP O&S Committee are included in at section 6 of the report. The Cabinet are asked to consider the report and the comments of the CYP O&S Committee and make formal recommendations, which will form part of the submission to the OSA.

### **3. The Proposals**

- 3.1. The proposals are, by way of statutory prescribed alteration:
- A 'Change of age range'. This will extend the upper age range at the school from 7 to 11. This element is proposed by the school's Governing Body, with the Local Authority usually the decision maker.
  - The 'Enlargement of the premises' to ensure sufficient physical capacity is available for the school when full with a 210 pupil capacity. This element is proposed by the Local Authority, which is also usually the decision maker.
- 3.2. It is proposed, subject to the recommendation of the Cabinet, and the decision of the Schools Adjudicator to formally implement the changes on or after 1 September 2020.

### **4. Results of the Formal Consultation**

- 4.1. As part of the statutory process, there was an informal consultation where the views of all interested parties could be expressed, and all views taken into consideration prior to formal publication of proposals. The period of informal public consultation ran for five weeks from 28 January to 3 March 2019.
- 4.2. Following on from the informal consultation, there was a four-week formal consultation, or statutory representation period. The period ran from 24 June to 21 July 2019.
- 4.3. A notice was published in the Medway Messenger newspaper to notify the public of the statutory representation period, and to direct them to where they could find details of the statutory proposals. These proposals were published on the Medway Council website. A copy of the notice and the proposals are attached as appendices 3 and 4.
- 4.4. There were four response to the formal consultation, three in support and one opposed. These are addressed in section 5.

### **5. Advice and analysis**

- 5.1. St Nicholas CE Infant School is currently a PAN 40 voluntary controlled infant school, providing early years and key stage 1 education for up to 120 children age 4-7 in the Strood area. The school is rated as Outstanding by Ofsted and is popular with parents.
- 5.2. If these proposals, and the associated changes at Gordon Infants and Juniors are implemented, St Nicholas will become a primary school with 210

places and the Gordon Schools will have 630 places an increase of 50 from the current capacity. This is an increase of 140 places in Strood (20 per year group). There are several large housing developments underway and proposed in Strood which will result in more demand for places, these additional places will help to meet some of that demand. It would be 2027 before the schools are full at their new capacities.

- 5.3. The associated proposals at Gordon Schools will result, over time, in an increase in the PAN at the infant school from 60 to 90, and a decrease in the juniors from 100 to 90. This will enable the Gordon Schools to be an all through primary with the children there benefitting from a seamless and coordinated primary education.
- 5.4. Some capital work will be required at both schools, and this will be funded through the Children and Adults Capital Programme, comprising of central government basic need grants and S106 contributions.
- 5.5. As an academy, the responsibility for the appropriate consultations relating to the Gordon Schools falls to the Trust, with the Regional Schools Commissioner being the decision maker. The Trust intend to consult on their element of the wider changes if approval is given for the St Nicholas proposals by the Council.
- 5.6. An admissions consultation will take place to amend the PAN of St Nicholas from 40 to 30. The Gordon Academies will also need to amend their admissions criteria; the infants from PAN 60 to 90 and the juniors from 100 to 90. This will be a coordinated approach to ensure the appropriate timescales are met.
- 5.7. National policy emphasises that popular and successful schools should expand. These proposed changes will increase the number of places in a school rated Outstanding by Ofsted, and maintain the balance of the supply of faith places in Strood.
- 5.8. There is not expected to be a detrimental impact upon other local schools, however how parents choose which primary school to send their children to can depend upon each school's popularity and performance, which can fluctuate over time.
- 5.9. The remainder of this section summarises the supportive responses and sets out the officer response to the objection received during the statutory representation period, highlighted in section 4 above.
- 5.10. Three supportive responses were received, highlighting their personal experience of St Nicholas Infants, and the impact that transitioning to a junior school at age 7 had. One response stated that as well as the children having to get used to a new school, the teachers have new pupils. In a primary school they would be able to talk to previous class teachers, but this is not possible in separate schools.
- 5.11. There was one objection to the proposals. This was on the grounds that parents and residents at Gordon Infant and Junior Schools had not been consulted in the same way as those at St Nicholas had been due to the

Gordons Schools not yet having undertaken their consultation. The respondent stated that it was felt that the original consultation process was misleading. It also raised a concern that “it is reasonable to conclude that this joint proposal for the three schools will result in the loss of a greenfield site”. The latter comment based upon an expectation that the Trust operating the Gordon schools would look to build a new school on its detached playing field.

**5.12. Officer response:**

As stated in section 5.5 above the Trust do intend to consult on their element of the changes as soon as is possible after the decision on St Nicholas. Officers will encourage the Trust to undertake a consultation that includes a wide range of stakeholders and certainly includes local residents.

The associated impacts at the Gordon Schools are set out in the original consultation document under the section headed “*Why is there a need to change St Nicholas from an infant to a primary school*”. At this point there was little else to add as the impact upon the Gordon Schools was and is straightforward.

Regarding the point about the Gordon School relocating to their detached playing field; it is difficult to comment on this as this would be a question for the Trust to answer. However, the cost of any such build is likely to be inhibitive in the current education financial climate, any proposals would require full and separate consultation for both planning and education. Therefore all stakeholders will have the opportunity to comment or raise concerns should the Trust put forward relocation proposals for the Gordon Schools.

Further to the above, officers are in discussions with the Gordon Schools as to what additional premises they would need on their current site to cater for the additional pupils. Those conversations are concerned with the development of the current site and no mention has been made of the detached playing field.

**6. Children and Young People Overview and Scrutiny Committee – 3 October 2019**

- 6.1. The Programme Lead, School Organisation and Capital Services, introduced the report which provided the outcome of the formal consultation in relation to the Council’s proposal to change St Nicholas CE VC Infant School to a primary school, by way of statutory prescribed alteration. The consultation resulted in four responses, three in support of the proposal and one opposed. It was explained that if the proposals were agreed and implemented, then Gordon Junior School would consult on lowering its (Published Admission Number (PAN) to 90 and Gordon Infant School would consult on increasing its PAN to 90, due to the knock on effect of children no longer transferring from St Nicholas CE VC Infant School to Gordon Junior School.
- 6.2. It was then confirmed by Councillor Hubbard that the objection recorded was submitted by him, however, he clarified that he did not object to the proposals being consulted on. His objection related to the process as he felt

there should have been a parallel consultation carried out by Gordon Infant and Junior Schools at the same time rather than after the consultation about St Nicholas CE VC Infant School. Councillor Hubbard also raised concern about the possible intention of the Gordon Schools to build on its detached playing field.

- 6.3. In response it was explained that Gordon Infant School had been fully engaged and kept up to speed with developments and options around the consultation process. It was important to note that as an academy, Gordon Infant and Junior Schools were not obliged to consult on the changes because it resulted in an increase in capacity at the school. However, the school would be consulting once the outcome of the proposed changes at St Nicholas CE VC Infant School had been approved and it had been the academy's choice to consult after the decision on St Nicholas CE VC Infant School was made.
- 6.4. In relation to the concern about the possible intention of the Gordon Schools to build on their detached playing field, officers confirmed that although it was an issue for the Trust to answer it considered it likely that the costs would be prohibitive in the current education financial climate, any proposals would need full consultation for both planning and education purposes and there had been no mention of this intention from the Trust with officers.
- 6.5. Members then raised a number of comments and questions, which included:
- 6.5.1 **Challenging the process for future similar situations** – A Member asked whether there were any avenues of communication that could be used to suggest any future similar scenarios could be consulted on simultaneously. Officers confirmed that strong working relationships did exist with the Regional Schools Commissioner (RSC) but they had not considered that on this occasion it warranted escalation to the RSC for intervention.
- 6.5.2 **Consultation response rate** – Concern was also raised about the low level of responses to the statutory consultation. Officers explained that as this was the second stage of consultation, following an informal stage which received more responses, this was expected and normal. This was also a proposal generally supported by all and therefore responses were anticipated to be low.
- 6.5.3 Over allocation of faith school places – A query was raised as to whether too many school places were being provided at faith based schools. Officers confirmed that school places were being provided at locations across Medway where there was need and that these places were being provided at both faith and non-faith schools.
- 6.6 The Committee noted the report and the clarification that the objection had related to the consultation process and not the proposals itself and recommended that its comments be forwarded to the Cabinet.

## 7. Diversity Impact Assessment

- 7.1. A Diversity Impact Assessment (DIA) is attached as Appendix 2. The DIA looks at how the proposed changes could impact upon various groups. The

report shows that there could potentially be some impact upon certain groups; however it shows that any impacts are expected to be positive ones.

## **8. Impact of the proposal on arrangements for looked after children**

8.1. Looked after children receive the highest priority for admission to all Medway schools. If necessary, the Admissions Code allows the council to place looked after children in schools that would otherwise be deemed full. This ensures that the council can secure appropriate provision for children that are looked after by the local authority. This strategy covers both mainstream and special schools and as such includes St Nicholas School.

## **9. Risk management**

9.1. The following risks arise if the proposals as stated in this report are not implemented. These are:

- A risk that it could undermine the Council's need to ensure the most effective use of resources, and in turn, the aim to raise standards across all schools.
- Parents dissatisfied at not being able to access a local faith school for junior age pupils, potentially leading to parents having children at different schools and the logistical problems that this would bring.

9.2. The following risks could arise if the proposals are implemented:

- If the expected numbers of pupils do not materialise, then the school may find itself having surplus places as well as larger buildings to maintain without the funding to do so. Current forecasts based upon roll numbers, birth rates and inward migration due to housing development in the area generally, together with St Nicholas being a good and popular school indicate that this risk is likely to be minimal.

## **10. Financial and legal implications**

10.1. Medway's maintained schools are funded from central Government via the local authority in the form of the dedicated schools grant. This is a ring-fenced grant for the provision of education across Medway and must be used to fund schools (and certain specified services to schools), and cannot be used to fund other Council services.

10.2. The physical expansion of St Nicholas CE Infant School will be funded via the Children and Adults Basic Need Capital Programme, which is mainly funded by Government grants, targeted grants and section 106 developer contributions. The expansion will be dependent on sufficient available funding within the Children and Adults Basic Need Capital Programme.

10.3. Some capital works will be required at the Gordon Academy to provide sufficient capacity for the additional pupils. This will also be funded via the Children and Adults Basic Need Capital Programme, which is mainly funded by Government grants, targeted grants and section 106 developer

contributions. The expansion will be dependent on sufficient available funding within the Children and Adults Basic Need Capital Programme.

- 10.4. The School Admissions (Infant Class Sizes) (England) Regulations 2012 sets a statutory maximum class size of 30 pupils in each key stage one year-group. With a PAN of 40 St Nicholas CE Infant School are required to open two classes per year but receive funding based on one and half class per year group. A reduction in the PAN to 30 will enable the school to provide one class per year group, which will result in a more streamlined and cost-effective education provision.
- 10.5. The Council has the power under sections 18 and 19 of the Education and Inspections Act 2006 to make "prescribed alterations" to a maintained school. The procedure for making prescribed alterations is set out in the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013.
- 10.6. As set out in sections 2.8 to 2.11, in this case the Council is not the decision maker due to the time lapse between the end of the statutory representation period and the proposed decision making date. Therefore, the decision on the proposals reverts to the OSA. The Cabinet can make recommendations to be included within the submission to OSA.
- 10.7. From 24 January 2014 there is no longer a prescribed 'pre-publication' (informal) consultation period for prescribed alterations, there is however a strong expectation on Local Authorities to consult interested parties in developing their proposal prior to formal publication as part of their duty under public law to act rationally and take into account all relevant considerations. The previous informal consultation satisfies that expectation.
- 10.8. The Council has a statutory duty to provide sufficient good quality school places.

## **11. Recommendations**

11.1. The Cabinet is asked to:

- 11.1.1. note the comments of the Children and Young People Overview and Scrutiny Committee, as set out in section 6 of the report;
- 11.1.2. consider and note the responses to the formal and informal consultations, together with the advice and analysis from officers and to recommend the following proposals to the Schools Adjudicator:
  - A 'Change of age range'. This will extend the upper age range at the school from 7 to 11. This element is proposed by the school's Governing Body, with the Local Authority usually the decision maker.
  - The 'Enlargement of the premises' to ensure sufficient physical capacity is available for the school when full with a 210 pupil capacity. This element is proposed by the Local Authority, which is also usually the decision maker.



## **12. Suggested reasons for decisions**

- 12.1. Where an objection has been made during formal consultation to the proposals for prescribed alterations to a School, the Cabinet must consider the objection(s) and decide whether to recommend the proposals.
- 12.2. Subject to Cabinet's recommendation and the OSA's determination, approval to proceed with the proposals would ensure that the Council meets its statutory duty to provide sufficient school places.

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### **Background papers**

- 1) Making significant changes ('prescribed alterations') to maintained schools - Statutory guidance for proposers and decision-makers - October 2018.  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/756572/Maintained\\_schools\\_prescribed\\_alterations\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756572/Maintained_schools_prescribed_alterations_guidance.pdf)
- 2) The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013. <http://www.legislation.gov.uk/uksi/2013/3110/contents/made>
- 3) School Place Planning Strategy 2018-2022  
[https://www.medway.gov.uk/downloads/file/4037/school\\_place\\_planning\\_strategy](https://www.medway.gov.uk/downloads/file/4037/school_place_planning_strategy)

### **Appendices**

- Appendix 1 - List of consultees
- Appendix 2 - Diversity Impact Assessment
- Appendix 3 - Public notice
- Appendix 4 - Statutory proposals