

KEY DECISION NOTICE

SERVICE AREA:	COMMUNITIES, CHILDREN, ADULTS, HEALTH Access and Inclusion
SUBJECT MATTER:	PRIORITY SCHOOLS BUILDING PROGRAMME – BROADOAK PRIMARY SCHOOL
DECISION:	It is DETERMINED that: i. Broadoak Community Primary School be expanded by increasing the capacity of the school from 315 pupils to 420 pupils from September 2015; and ii. the capacity of the maintained nursery on the site will be 26 full time equivalent places (52 part time places);
DECISION TAKER(S):	Councillor Gerald P. Cooney
DESIGNATION OF DECISION TAKER(S):	Executive Member for Learning, Skills and Economic Growth
DATE OF DECISION:	18 December 2013
REASON FOR DECISION:	To allow the proposals for Broadoak Primary School to be rebuilt as a 420 place school with a 26 full time equivalent places or 52 part time places, through the Priority Schools Building Programme and to assist the Council to comply with its statutory duty to secure suitable and sufficient school places in Ashton under Lyne.
ALTERNATIVE OPTIONS REJECTED (if any):	The Priority School Building Programme is being managed and delivered by a central procurement team provided by the Education Funding Agency. Although this will reduce the Council's risk in respect of cost overruns on individual projects, the reduction in influence the Council has over the design and scope of the project, has the potential to create legacy issues for the Council and or school, for example in the suitability of the facilities, latent defects or design defects not covered by insurance or warranty. In addition, it is unclear to what extent the risks related to planning and or land issues will be prior to and during construction. The risks can be mitigated by the Council retaining close involvement in the individual project development but not completely. In addition, as we are acutely aware from the cancellation of the Building Schools for the Future programme, the government could cancel this programme at any time if future policy changes or there is a change in the prioritisation of investment in schools. This would not only cause significant disappointment in the school community, it would also result in additional pressures on capital repair and maintenance budgets and also a potential inability to meet the demand for primary school places. There is also potential reputational risk if the eventual design of the schools does not meet school or community expectations. However, not engaging through this process means that it is highly unlikely that the school will have sufficient funding to deliver a new school. If the programme were stopped, the school would need the equivalent of an additional three classroom spaces. If this were to be the case, the Council would need to consider reducing the capacity of the school back

	to 315 or put in additional temporary buildings with a current estimated cost of approximately £600,000.
CONSULTEES:	<p>Parents; Staff at Broadoak Primary School; Governors of Broadoak Primary School; Pupils attending Broadoak Primary School; Education Funding Agency; Department for Education; Local residents; Neighbouring Authorities; Diocesan Representatives; Ward Councillors; Member of Parliament for Stalybridge and Hyde; and Union Representatives.</p>
FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	<p>The DfE and EFA are centrally managing, procuring and funding the rebuilding of the Broadoak Primary School and Nursery through grant funding. Therefore, the Council is not expected to finance the cost of most of the building, should the project proceed successfully.</p> <p>The DfE and EFA have made good progress with the overall programme so far and there is no reason to anticipate that funding will be withdrawn or the project not continue, as significant resources have already been put in place to progress the scheme so far and the contractors have already been appointed.</p> <p>The Council's liability is limited to an estimated £160,000 for replacement furniture for current pupils as the EFA only fund additional furniture, fittings and equipment for new pupils.</p>
LEGAL IMPLICATIONS: (Authorised by Borough Solicitor)	<p>The Council has a statutory duty under the Education Act 2011, to ensure that there are sufficient and suitable school places within the borough to meet current and projected demand.</p> <p>The Council also has a responsibility to maintain and where necessary, improve the condition of community and voluntary controlled schools, although the majority of funding allocated by the DfE is now allocated to schools, through their revenue budgets.</p> <p>The successful application for funding to expand the Broadoak Primary School building thereby increasing its capacity from 315 places to 420 places, for pupils aged 4 to 11, and a nursery with capacity for 52 part-time places/26 full time equivalent places will enable the Council to meet both statutory responsibilities for places in the Ashton Hurst ward, using additional capital funding allocated directly to the project by the DfE.</p> <p>In order for the project to progress to the next stage, which will be the design and construction phase, the Council is required to confirm the future capacity of the school.</p> <p>The relevant legislation, which determines the process the process that needs to be followed and the factors that need to be taken into account by the decision taker, in order to determine and expand the capacity of a maintained school is set within The Education and Inspections Act 2006 (EIA 2006); and The School</p>

	<p>Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (as amended by The School Organisation and Governance (Amendment) (England) Regulations 2007, which came into force on 21 January 2008 and The School Organisation and Governance (Amendment)(England) Regulations 2009 which came into force on 1 September 2009).</p> <p>Statutory proposals are required for a proposed enlargement of any school premises which would increase the capacity of the school by both (a) more than 30 pupils and (b) by 25% or 200 pupils (whichever is the lesser).</p> <p>There are 5 statutory stages that must be followed for a statutory proposal:</p> <ul style="list-style-type: none"> • consultation with stakeholders; • publication of a statutory notice by the proposer; • representation period, normally 4 weeks, but 6 weeks in specified circumstances; • decision by the Local Authority in most cases, otherwise by the schools adjudicator; and • implementation, if approved. <p>Where proposers require capital funding to implement their proposals, they should secure this before publishing proposals. Proposals cannot be approved by 'decision makers' unless the capital funding for their implementation is in place.</p> <p>The proposals to expand the capacity of the school, have progressed through the consultation, publication and representation stages, and the outcome is detailed in the report.</p> <p>The DfE have confirmed that the replacement of the school as a 420 place school together with a 52 part-time/26 full time equivalent place nursery, is confirmed in the programme to have its condition needs addressed. The principle of the expansion accepted and the scheme is being developed and costed accordingly.</p> <p>The progression of the scheme is subject to approval at Outline Business Case and Final Business Case will only be progressed to these stages on condition that the expansion of the school is approved.</p> <p>The determination and approval of the recommendations contained within this Key Report will enable the DfE and EFA to progress the project to the next stage.</p>
CONFLICT OF INTEREST:	None
DISPENSATION GRANTED BY STANDARDS COMMITTEE ATTACHED:	N/A
ACCESS TO INFORMATION:	<p>Appendix 1: Consultation document dated September 2013 Appendix 2: Notice of proposals dated 17 October 2103 Appendix 3: Statutory Guidance for Decision Makers</p> <p>The background papers (including consultation documents and responses and the Published Notice) relating to this report can be</p>

inspected by contacting the report writer Catherine Moseley,
Head of Access and Inclusion by:



Telephone: 0161 342 3302



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Signed..... Dated: 18 December 2013

Councillor Gerald P. Cooney, Executive Member (Learning, Skills and Economic Growth)

KEY DECISION REPORT

SERVICE AREA:	COMMUNITIES, CHILDREN, ADULTS, HEALTH Access and Inclusion
SUBJECT MATTER:	PRIORITY SCHOOLS BUILDING PROGRAMME – BROADOAK PRIMARY SCHOOL
DATE OF DECISION:	18 December 2013
DECISION TAKER	Cllr Gerald P. Cooney – Executive Member (Learning, Skills and Economic Growth)
REPORTING OFFICER:	Heather Loveridge, Head of Education
REPORT SUMMARY:	<p>Broadoak Primary School was the subject of a successful bid to the Department for Education, for a new school to be delivered through the Government's centrally managed Priority School Building Programme. The approved bid, requested an increase in capacity in the new building from 315 places to 420 places for pupils aged 4 to 11 and a nursery with capacity for 52 part time places.</p> <p>In order for the proposals for the new school to progress to the next stage, through the Priority Schools Building Programme, statutory proposals to expand the school from a two form entry primary school to a three form entry must be approved via a Key Decision.</p> <p>The building programme is centrally being delivered by the Education Funding Agency (EFA) through grant funding.</p> <p>If approved, this will increase the school's capacity from 315 to 420 and increase the published admission number from 45 to 60 for each admission intake. It is proposed that there will be a two form entry in September 2015 and in each subsequent year, so that the school would have a capacity of 420 by September 2020, together with the proposed replacement nursery, which would have 26 full time equivalent places.</p>
RECOMMENDATIONS:	<p>The Decision Taker is recommended to:</p> <ol style="list-style-type: none"> i. approve the proposal to expand Broadoak Community Primary School by increasing the capacity of the school from 315 pupils to 420 pupils from September 2015; and ii. to confirm that the capacity of the maintained nursery on the site will be 26 full time equivalent places (52 part time places);
JUSTIFICATION FOR DECISION:	To allow the proposals for Broadoak Primary School to be rebuilt as a 420 place school with a 26 full time equivalent places or 52 part time places, through the Priority Schools Building Programme and to assist the Council to comply with its statutory duty to secure suitable and sufficient school places in Ashton under Lyne.
ALTERNATIVE OPTIONS REJECTED (if any):	The Priority School Building Programme is being managed and delivered by a central procurement team provided by the Education Funding Agency. Although this will reduce the

	<p>Council's risk in respect of cost overruns on individual projects, the reduction in influence the Council has over the design and scope of the project, has the potential to create legacy issues for the Council and or school, for example in the suitability of the facilities, latent defects or design defects not covered by insurance or warranty. In addition, it is unclear to what extent the risks related to planning and or land issues, schemes will be prior to and during construction. The risks can be mitigated by the Council retaining close involvement in the individual project development but not completely. In addition, as we are acutely aware from the cancellation of the Building Schools for the Future programme, the government could cancel this programme at any time if future policy changes or there is a change in the prioritisation of investment in schools. This would not only cause significant disappointment in the school community, it would also result in additional pressures on capital repair and maintenance budgets and also a potential inability to meet the demand for primary school places. There is also potential reputational risk if the eventual design of the schools does not meet school or community expectations. However, not engaging through this process means that it is highly unlikely that the school will have sufficient funding to deliver a new school. If the programme were stopped, the school would need the equivalent of an additional three classroom spaces. If this were to be the case, the Council would need to consider reducing the capacity of the school back to 315 or put in additional temporary buildings with a current estimated cost of approximately £600,000.</p>
<p>CONSULTEES:</p>	<p>Parents; Staff at Broadoak Primary School; Governors of Broadoak Primary School; Pupils attending Broadoak Primary School; Education Funding Agency; Department for Education; Local residents; Neighbouring Authorities; Diocesan Representatives; Ward Councillors; Member of Parliament for Stalybridge and Hyde; and Union Representatives.</p>
<p>FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)</p>	<p>The DfE and EFA are centrally managing, procuring and funding the rebuilding of the Broadoak Primary School and Nursery through grant funding. Therefore, the Council is not expected to finance the cost of most of the building, should the project proceed successfully.</p> <p>The DfE and EFA have made good progress with the overall programme so far and there is no reason to anticipate that funding will be withdrawn or the project not continue, as significant resources have already been put in place to progress the scheme so far and the contractors have already been appointed.</p> <p>The Council's liability is limited to an estimated £160,000 for replacement furniture for current pupils as the EFA only fund additional furniture, fittings and equipment for new pupils.</p>

**LEGAL IMPLICATIONS:
(Authorised by Borough
Solicitor)**

The Council has a statutory duty under the Education Act 2011, to ensure that there are sufficient and suitable school places within the borough to meet current and projected demand.

The Council also has a responsibility to maintain and where necessary, improve the condition of community and voluntary controlled schools, although the majority of funding allocated by the DfE is now allocated to schools, through their revenue budgets.

The successful application for funding to expand the Broadoak Primary School building thereby increasing its capacity from 315 places to 420 places, for pupils aged 4 to 11, and a nursery with capacity for 52 part-time places/26 full time equivalent places will enable the Council to meet both statutory responsibilities for places in the Ashton Hurst ward, using additional capital funding allocated directly to the project by the DfE.

In order for the project to progress to the next stage, which will be the design and construction phase, the Council is required to confirm the future capacity of the school.

The relevant legislation, which determines the process the process that needs to be followed and the factors that need to be taken into account by the decision taker, in order to determine and expand the capacity of a maintained school is set within The Education and Inspections Act 2006 (EIA 2006); and The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (as amended by The School Organisation and Governance (Amendment) (England) Regulations 2007, which came into force on 21 January 2008 and The School Organisation and Governance (Amendment)(England) Regulations 2009 which came into force on 1 September 2009).

Statutory proposals are required for a proposed enlargement of any school premises which would increase the capacity of the school by both (a) more than 30 pupils and (b) by 25% or 200 pupils (whichever is the lesser).

There are 5 statutory stages that must be followed for a statutory proposal:

- consultation with stakeholders;
- publication of a statutory notice by the proposer;
- representation period, normally 4 weeks, but 6 weeks in specified circumstances;
- decision by the Local Authority in most cases, otherwise by the schools adjudicator; and
- implementation, if approved.

Where proposers require capital funding to implement their proposals, they should secure this before publishing proposals. Proposals cannot be approved by 'decision makers' unless the capital funding for their implementation is in place.

The proposals to expand the capacity of the school, have progressed through the consultation, publication and representation stages, and the outcome is detailed in the report.

The DfE have confirmed that the replacement of the school as a 420 place school together with a 52 part-time/26 full time

	<p>equivalent place nursery, is confirmed in the programme to have its condition needs addressed. The principle of the expansion accepted and the scheme is being developed and costed accordingly.</p> <p>The progression of the scheme is subject to approval at Outline Business Case and Final Business Case will only be progressed to these stages on condition that the expansion of the school is approved.</p> <p>The determination and approval of the recommendations contained within this Key Report will enable the DfE and EFA to progress the project to the next stage.</p>
<p>RISK MANAGEMENT:</p>	<p>There has been a significant increase in the birth rate in Ashton Under Lyne as well as Tameside as a whole. Tameside Council has successfully secured funding through the Priority School Building Programme to rebuild Broadoak Primary School as a 2 form entry primary school. There is a risk that if the proposals to approve the increase in the capacity of the school to 420 places are not approved, that the Priority School Building Programme could be delayed or cancelled as certainty of the capacity of the proposed new school building needs to be determined before the design stage can progress to the next stages.</p> <p>The proposals will enable the removal of 100% of the current condition, suitability and access deficiencies of the current multiple buildings on the school site removing the Council's and the schools financial and operational risk relating to addressing these issues in the medium and long term.</p> <p>The increase in capacity of 105 primary school places, in a new building will reduce the Council's risks in respect of its responsibility to provide sufficient and suitable places.</p> <p>The replacement of the current school buildings with a purpose designed single building will support the improvement of standards and aspirations of pupils attending the schools and their families.</p>
<p>LINKS TO COMMUNITY PLAN:</p>	<p>The proposals will support the delivery of the objectives of the Community Strategy.</p>
<p>ACCESS TO INFORMATION:</p>	<p>Appendix 1: Consultation document dated September 2013 Appendix 2: Notice of proposals dated 17 October 2103 Appendix 3: Statutory Guidance for Decision Makers</p> <p>The background papers (including consultation documents and responses and the Published Notice) relating to this report can be inspected by contacting the report writer: Catherine Moseley, Head of Access and Inclusion by:</p> <p> Telephone: 0161 342 3302  e-mail: catherine.moseley@tameside.gov.uk</p>

1 INTRODUCTION

- 1.1 The Council has a statutory duty under the Education Act 2011, to ensure that there are sufficient and suitable school places within the borough to meet current and projected demand. The Council constantly reviews school places in the borough and takes into account a range of factors when predicting the number of school places needed. The main indicator for the number of primary school places needed in the borough is the birth rate.
- 1.2 Tameside has experienced a surge in births over recent years which has led to difficulties with offering places for children in Reception, in many areas of the borough. The situation is set to get even more acute over the next 3 years as the number of births continues to rise, unless additional places are provided.
- 1.3 Another factor in planning school places is the amount of new housing development being planned in the borough. Tameside's Core Strategy is the key compulsory local development document. Every local development document is built on the principles set out in the core strategy, regarding the development and use of land in Tameside's planning area. The Core Strategy is currently being reviewed and it is predicted that an additional 11,000 houses will be built in the borough, over the next 15 years. This will require approximately an additional 4,000 school places in total or 330 school places per year group.
- 1.4 The Council has plans in place to introduce both permanent and temporary places into the primary school system, across the borough to cover the projected increase. It is expected that birth rates will reduce back again across the borough, however when this occurs, it is not anticipated to be in the Ashton area, where birth rates are projected to remain high and which drives the need for permanent primary school places in this area.
- 1.5 The Council also has a responsibility to maintain and improve where necessary, the condition, suitability and accessibility of community and voluntary controlled school buildings. In 2011, the government invited Councils to submit proposals to replace or remodel school buildings with the worst condition needs and also allowed an opportunity for the expansion of a school's capacity, where there was an evidenced need, under a centrally managed programme known as the Priority Schools Building Programme. Previous reports have been brought to the Executive Board confirming that the Council successfully bid for four new schools. Holden Clough, Silver Springs Academy, Flowery Field and Broadoak primary schools.
- 1.6 The in principle approved scheme for Broadoak Primary School, is the replacement of the existing buildings with a capacity of 315 pupils with a new building with a capacity of 420 pupils aged 4 to 11, plus a replacement maintained nursery with a capacity of 26 Full Time Equivalent places.
- 1.7 The EFA who are delivering the programme on behalf of the DFE, have batched the 240 schools which have been approved nationally, into a number of phases. Broadoak Primary School is in the second phase of schools delivered in four batches. The EFA are in the process determining the scope of each of the schemes, in order to package them as a single project, before selecting a sample scheme and undertaking a procurement exercise to selecting a private sector partner to deliver the new schools.
- 1.8 Broadoak Community Primary School has been identified as a school located within an area that is predicted to sustain an increased level of demand and provides the necessary site area to accommodate an enlargement of premises. The statutory process for consultation to expand a maintained school has been undertaken.

- 1.9 This report details the process and that has been followed so far and seeks approval for the making of a Key Decision to increase the capacity of the school to 420 places with a 26 Full Time Equivalent place nursery.

2 PRIORITY SCHOOL BUILDING PROGRAMME

- 2.1 In July 2011, the government launched the Priority Schools Building Programme. The programme's objectives were to address schools with the highest outstanding building condition needs, as well as to meet the increasing demand for school places.
- 2.2 Tameside Council has been successful in securing support under the Priority School Building Programme for four schools those being Holden Clough Community Primary School, together with Silver Springs Academy in Stalybridge, Flowery Field Primary School in Hyde and Broadoak Primary School in Ashton-under-Lyne. The reason for the success was that the condition surveys evidenced the priority need for investment, against other Tameside schools and nationally.
- 2.3 Broadoak Primary School is currently a 1.5 form entry school in the Ashton Hurst area which if this decision is approved would be rebuilt as a 2 form entry school in order to meet significantly increased demand for school places, in this area of the borough.
- 2.4 The Priority School Building Programme for Broadoak Primary School has reached a stage where detailed design work is due to start and the DfE and EFA cannot progress this work until the future capacity of the school is formally determined.

3 EXPANDING A MAINTAINED SCHOOL

- 3.1 Statutory Proposals are required for a proposed enlargement of the premises of a school, which would increase the capacity of the school by more than 30 pupils for an excepted expansion. The Department for Education has issued guidance called 'Expanding a Maintained Mainstream School by Enlargement or Adding a Sixth Form' which explains the process that local authorities must go through to expand a school.
- 3.2 The guidance requires local authorities to follow five statutory stages which include Consultation, Publication, Representation, Decision and Implementation.

Stage 1 – Consultation

- 3.3 It is recommended by the DfE that the consultation period should run for a minimum of 4 weeks excluding school holidays and the council is required to consult all interested parties, allowing adequate time to provide a response, ensuring sufficient information is provided on the matters on which they are being consulted, ensuring it is clear how views can be made known and the council can demonstrate how they have taken into account the views expressed during consultation in reaching any subsequent decision.
- 3.4 The Consultation Period for Broadoak Primary School ran from 16 September 2013 until the 14 October 2013
- 3.5 A consultation document was developed and a copy is included at **Appendix 1**. The Council sent copies of this to:
- Broadoak Primary School
 - Chair of Governors
 - Neighbouring Authorities
 - Diocesan Representatives

- Ward Councillors
- Member of Parliament for Ashton

3.6 All parents of current pupils at Broadoak Primary School were sent a letter informing them of the consultation and that the consultation document was available for parents and governors through the school. The letter also informed them of the opportunity to meet with officers of the council to discuss the proposal at a drop in session. The document was also available on the Council's website.

3.7 In the course of consultation on the options, the Council has met with:

- Parents, via a drop in sessions held on 24 September 2013;
- The school governing body held on 8th October; and

3.8 All consultees were given the opportunity to respond in writing.

3.9 At the end of the consultation period, three responses had been received and these are considered in Section 4 of this report.

Stage 2 – Publication

3.10 The council is required to publish proposals within a reasonable timeframe following consultation and they must contain the information specified in The School Organisation (Prescribed Alterations to Maintained Schools (England) Regulations 2007 (as amended). A statutory notice containing specified information must be published in a local newspaper.

3.11 A statutory notice was published in the Tameside Reporter Newspaper on the 17 October 2013 and also published on the Tameside MBC public website. The statutory notice is included in **Appendix 2**.

Stage 3 – Representation

3.12 Once proposals are published there follows a statutory representation period, during which comments on the proposals can be made. Comments must be returned to Tameside Council and any person can submit representation, which can be objections as well as expressions of support for the proposals.

3.13 The period for making representations including objections and expressions of support for proposals ran from 17 October until 22 November 2013. During this period, one representation were received and this is considered in Section 4 of this report.

Stage 4 - Council Decision on Proposals

3.14 Decisions on the school organisation proposals are taken by the Council, taking into account feedback received during the consultation process. A decision must be reached within 2 months of the end of the representation period. The Department for Education does not prescribe the process by which the council carries out its decision making function however it is required to have regard to Statutory Guidance – Factors to be Considered by Decision Makers. These are considered in Section 6 of this report.

Stage 5 – Implementation

3.15 The proposers have a statutory duty to implement any proposals which the Council has approved by the approved implementation date and must be implemented as published, taking account any modifications by the Decision Maker.

4 RESPONSES TO CONSULTATION

- 4.1 The Council received three written responses to the initial consultation and one to the publication of the statutory proposals. Responses were from two Chairs of Governors at local primary schools, one Headteacher and one local resident. A written response was made to all respondents where a return communication address was provided.

Summary of Total Responses Received for Broadoak

Category of respondent	Total number of responses received from each category	Of which total number with comments in support of proposals	Of which responses received without comment	Of which total number who are opposed or with concerns.
Governors of local Primary Schools	2	0	0	2
Headteacher of Local Primary Schools	1	0	0	1
Local Resident	1	0	1	0
Totals	4	0	1	3

- 4.2 Of the four responses received, three were from schools, with concerns around the proposals, having a detrimental effect on the numbers on roll at other primary schools within the Ashton area and one response was received from a local resident who was concerned that they were unaware of the consultation as they did not walk down the road often due to mobility issues.

Concerns	Response:
Concerns over	There is
Increased places at Broadoak Primary school would result in fewer places being taken up at neighbouring schools and make the schools more vulnerable to transience which is already a growing problem for some schools; impacts on maintenance of standards and reduction in schools budgets which could lead to redundancies.	<p>Accurate forecasting of pupil numbers is essential to the effective planning of school places and the council does not wish to create surplus places within existing schools.</p> <p>Pupil numbers in the Ashton area as in others are expected to rise and it is anticipated that once the birth rate peaks, demand for places within the Ashton area will remain high. Whilst that is no guarantee that there won't be surplus capacity in some schools, the levels of expected demand are such that additional places are essential to meet need.</p> <p>Tameside council does not operate catchment areas therefore any admission to the school will be based on the Tameside Coordinated Admission Policy which takes account of a number of factors, including distance to the school.</p>
Creating a significant number of places across all year groups is not the best way to solve the issue of place shortages. Providing extra places in Years 5/6 could increase the amount of movement between schools,	It would be a school and governing body decision if they wished to increase the Published Admission Number in all year groups or allow the school to naturally fill from Reception through Key Stage One and into Key Stage Two.

which would inevitably have a detrimental effect on standards.	
Did not know about the consultation as rarely walk down the road	The consultation followed the statutory process which included the notice being printed in the local paper and on the school gates. When the new school is further into its procurement process, a planning application will be made and local residents will have further chance to comment on the proposals.

- 4.3 No formal responses were received from the Broadoak Primary School, however, they have been actively working on plans for the new school building and confirm support for the proposals to increase the capacity of the school.

5 DECISION MAKING

- 5.1 The factors that a decision taker needs to consider are contained in The Education and Inspections Act (EIA) 2006 and The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (SI:2007 No. 1289), which came into force on 21 January 2008 and The School Organisation and Governance (Amendment) which came into force on 1 September 2009. A copy is included in **Appendix 3**. There are four key issues, which the Decision Maker should consider before judging the respective factors and merits of the statutory proposals:

- Is any information missing? If so, the Decision Maker should write immediately to the proposer/promoter specifying a date by which the information must be provided.
- Does the published notice comply with statutory requirements?
- Has the statutory consultation been carried out prior to the publication of the notice?
- Are the proposals linked or “related” to other published proposals?

- 5.2 In relation to the four points above, the following should be taken into consideration when making the final decision:

- a) All required information is set out in sections 3 - 6 of this report, including details of the statutory consultation (**Appendix 1**) that had been carried out;
- b) The statutory notice was drawn up in conjunction with Legal Services and complies with statutory requirements. A notice of proposals was published on 17 October 2013 (**Appendix 2**) and was displayed in a number of places according to Department for Education guidance. The notice was placed on all entrances to Broadoak Primary School, on the Tameside Public website and in the Tameside Reporter newspaper. The notice of proposals had a closing date of 22 November 2013. Details of the proposals were also sent to the relevant governing body, the Secretary of State and anyone who requested a copy in accordance with the 2007 Regulations, Schedule 5, paragraph 28;
- c) The statutory consultation was carried out prior to the publication of the Statutory notice as described in section 3 of this report; and
- d) The proposal to increase the current capacity of Broadoak Primary School is not linked or related to other published proposals.

- 5.3 The DfE guidance ‘Expanding a Maintained Mainstream School by Enlargement or Adding a Sixth Form - A Guide For Local Authorities And Governing Bodies’ identifies a range of factors that decision makers should consider in coming to a decision (para 4.1 – 4.80). Not all are relevant to these proposals but those that are include:

- 5.4 **A system shaped by parents** (paragraphs 4.17 to 4.18 of the Statutory Guidance) and specifically within that specific duties to secure a diversity of provision and respond to representations from parents.
- 5.5 Statutory Proposals are required for a proposed enlargement of the premises of a school, which would increase the capacity of the school by more than 30 pupils and there are 5 statutory proposals for an excepted expansion, which include:
- Consultation
 - Publication
 - Representation
 - Decision
 - Implementation
- 5.6 A consultation period ran from 16 September 2013 until the 14 October 2013.
- The Council sent copies of the Consultation Document to:
- Broadoak Primary School;
 - Chair of Governors;
 - Neighbouring Authorities;
 - Diocesan Representatives;
 - Ward Councillors; and
 - Member of Parliament for Hyde.
- 5.7 All parents of current pupils at Broadoak Primary School were sent a letter informing them of the consultation and that the consultation document was available for parents and governors through the school. The letter also informed them of the opportunity to meet with officers of the council to discuss the proposal at a drop in session. The document was also available on the Council's website.
- 5.8 In the course of consultation on the options, the Council has met with parents, via a drop in session held on 24 September 2013
- 5.9 All consultees were given the opportunity to respond in writing.
- 5.10 At the end of the consultation period, three responses had been received and these are considered in Section 4 of this report.
- 5.11 A statutory notice was **published** in the local press on the 17 October 2013.
- 5.12 **Representation** – a period in which comments on proposals could be made including objections and expressions of support for proposals ran from 17 October until 22 November 2013. One representation was made within the period.
- 5.13 **Standards** – (paragraphs 4.19 to 4.21 of the Statutory Guidance) states that Decision Makers should be satisfied that proposals for changes to a school's provision will contribute to raising local standards of provision, and will lead to improved attainment for children and young people.
- 5.14 Broadoak was inspected on 5 March 2013 and received an overall rating of good. The report highlights that teaching is good and sometimes outstanding, from low start points pupils make good progress throughout the school.
- 5.15 The curriculum is well organised and provides a range of rich experiences which contribute to pupils development. Pupils good behavior contributes positively to the progress they

make and to the friendly and welcoming atmosphere which is evident throughout the school. Pupils behave well, feel safe and have good attitudes to learning.

5.16 The Headteacher has high ambitions for the school. Senior Leaders are accurate in their judgement about the school and they know what needs to be done and have set appropriate priorities to improve the school further.

5.17 The following table shows that Broadoak Primary School's Key Stage 2 results have improved over the last few years:

2012 KS2 Performance Tables last update: (14 Mar 2013)

Year on year comparisons

Percentage achieving Level 4 or above in both English and Mathematics	2009	2010	2011	2012
School	94%	IA	66%	76%
LA	73%	74%	76%	82%
England - All Schools	72%	73%	74%	79%

5.18 **Diversity** – (paragraphs 4.22 to 4.23 of the Statutory Guidance). Decision Makers should consider how proposals will contribute to local diversity. They should consider the range of schools in the relevant area of the LA and whether the expansion of the school will meet the aspirations of parents, help raise local standards and narrow attainment gaps.

5.19 The proposals to increase current capacity from 315 to 420 at Broadoak Primary School will increase parental choice within the Ashton area and meet the demand for school places.

5.20 **Every Child Matters** – (paragraphs 4.24 of the Statutory Guidance). Decision Makers should consider how proposals will help every child and young person achieve their potential in accordance with Every Child Matters' principles which are: to be healthy; stay safe; enjoy and achieve; make a positive contribution to the community and society; and achieve economic well-being.

5.21 Broadoak Primary School as other schools, embraces the Every Child Matters agenda, and this will be reflected in the quality of provision.

5.22 **Equal Opportunity Issues** - (paragraph 4.28). Decision Makers should consider whether there are any sex, race or disability discrimination issues that arise from the changes being proposed, for example that there is equal access to single sex provision for the other sex to meet parental demand. Similarly there needs to 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.

5.23 The Council believes that there are no equality impact issues that need to be considered or balanced in making this decision – if anything it increases access and choice allowing more pupils to attend this oversubscribed school which has a good assessment by Ofsted. The provision of a new building replacing multiple buildings in poor condition and with poor access will positively impact on the ability of the school to cater for pupils with mobility impairment.

5.24 **Need for Places** – (Paragraphs 4.28-4.30). Decision Makers should consider whether there is a need for the expansion and should consider the evidence presented for the expansion such as planned housing development or demand for provision. The Decision Maker should take into account not only the existence of spare capacity in neighbouring schools, but also the quality and popularity with parents of the schools in which spare capacity exists and evidence of parents' aspirations for places in the school proposed for

expansion. The existence of surplus capacity in neighbouring less popular or successful schools should not in itself prevent the additional of new places.

- 5.25 The Council constantly reviews school places in the borough and takes into account a range of factors when predicting the number of school places needed. The main indicator for the number of primary places needed, is the birth rate in the borough. The fluctuation in the birth rate over a period of time is called the birth rate cycle. In Tameside, this cycle is approximately 25 years from peak birth rate to peak birth rate so we are predicting that the birth rate is likely to increase in coming years peaking in 2016, for intake into primary schools in 2020.
- 5.26 Another factor in planning school places is the amount of new housing development being planned in the borough. Tameside's Core Strategy is the key compulsory local development document. Every local development document is built on the principles set out in the Core Strategy, regarding the development and use of land in Tameside's planning area. The Core Strategy is currently being reviewed and it is predicted that an additional 11,000 houses will be built in the borough, over the next 15 years. This will require approximately an additional 4,000 school places in total or 330 school places per year group.
- 5.27 The Council is planning to introduce both permanent and temporary places into the primary school system, across the borough to cover the projected increase. It is expected that birth rates will reduce again across the Borough, however when this occurs, it is not anticipated to be in the local Ashton area, where birth rates are projected to remain high and which drives the need for permanent primary school places in this area.
- 5.28 The Council has a statutory duty under the Education Act 2011, to secure sufficient and suitable places for pupils in its area. Taking into account the range of factors above, this consultation proposes that the replacement Broadoak Primary School building, is designed to accommodate 420 pupils, an increase of 105 pupils to support the satisfaction of the need for additional places in this area under the Priority School Building Programme.
- 5.29 The following table highlights the current Published Admission Numbers for all schools within the Ashton area as at the January census 2013. It highlights that there are few places in Key Stage 1 in Ashton and many schools are oversubscribed which indicates that demand for places within this area exceeds the supply.
- 5.30 The spare capacity for school places in the Ashton area, relates to Key Stage 2, which is indicative of how the increase in the birth rate will affect each school as the children move through the year groups.

School Name	PAN	R	1	2	3	4	5	6	Total	Net Capacity	Places over or under the PAN
The Heys	30	31	31	30	30	30	28	30	210	210	0
Ashton West End	45	45	47	46	41	46	44	37	306	315	9
Waterloo	60	61	60	56	58	48	50	48	381	420	52
Holden Clough	30	32	30	30	30	30	31	25	208	210	2
Broadoak	45	45	42	46	41	38	30	23	265	315	50
Rosehill	60	61	58	60	52	60	45	58	524	420	26
Hurst Knoll St James	30	32	30	29	25	23	23	26	188	210	22
Parochial	30	30	29	32	29	28	30	28	206	210	4
St James	30	32	29	30	28	29	18	28	194	210	16

Canon Johnson	30	30	30	30	29	30	30	18	197	210	13
Holy Trinity	30	29	30	31	30	29	27	31	207	210	3
St Peters	30	29	30	31	29	26	29	21	195	210	15
Canon Burrows	60	64	60	61	56	62	59	59	421	420	-1
St Christopher's Roman Catholic	30	30	30	30	29	30	27	30	206	210	4
Our Lady	30	33	29	30	29	31	29	30	211	210	-1
TOTAL	570	584	565	572	536	540	500	492	3789	5290	
Places over or under the Total PAN		-14	5	-2	34	30	70	78		201	

PAN = Published Admission Number

- 5.31 **Expansion of successful and popular Schools** – (Paragraph 4.31-4.34) The Government is omitted to ensuring that every parent can choose and excellent school for their child. We have made clear that the wishes of parents should be taken into account in planning and mangling school estates. Places should be allocated where parents want them and as such it should be easier for successful and popular primary and secondary schools to grow to meet parental demand.
- 5.32 Broadoak Primary School is a popular school which is evidenced over the last 5 years where the number of first preferences for admission years has remained very consistent over the years. During the last 5 years the number of parents choosing Broadoak Primary School as their first and 2nd preference has generally met or exceeded the Published Admission number.
- 5.33 **Travel and Accessibility for All** – (paragraphs 4.33 to 4.34) Decision makers should satisfy themselves that accessibility planning has been properly taken into account. Facilities are to be accessible by those concerned, by being located close to those who will use them, and the proposed changes should not adversely impact on disadvantaged groups. In deciding statutory proposals, the Decision Maker should bear in mind that proposals should not have the effect of unreasonably extending journey times or increasing transport costs, or result in too many children being prevented from travelling sustainably due to unsuitable routes.
- 5.34 There is little surplus capacity in Ashton primary schools, particularly in Key Stage 1 as shown in the table above. Parents from the Ashton area are having to travel to other areas of the borough to secure school places, especially where sibling groups move into the area. The proposal to expand Broadoak Primary School may see an increase in traffic in the local area but will mean that parents in the whole of Ashton have more choice about schools in their area so decreasing school travel in the borough overall.
- 5.35 **Capital** – (paragraphs 4.57 to 4.59) Decision Makers should be satisfied that any capital required to implement the proposals will be available. In the case of an LA, this should be from an authorised person within the LA, and provide detailed information on the funding, provision of land and premises etc.
- 5.36 The Priority School Building Programme is being financed and centrally managed by the Department for Education and Education Funding Agency who have confirmed that the school will be included in the programme and are actively working on an Outline Business case for the replacement school.
- 5.37 The DfE and EFA are centrally managing, procuring and funding the rebuilding of the Broadoak Primary School and Nursery. Therefore, the Council is not expected to finance the cost of most of the building, should the project proceed successfully. The construction of the new school will be financed by capital grant provided through the Priority Schools Building Programme as considered in the Key Decision of 18 April 2013.

- 5.38 The DfE and EFA have made good progress with the overall programme so far and there is no reason to anticipate that funding will be withdrawn or the project not continue, as significant resources have already been put in place to deliver the scheme. However, in approving the increase of primary places at the school, on a permanent basis and in light of the demonstrated need for the additional places in the area, the decision taker must take into account the possibility that the school will not be rebuilt if the programme were stopped.
- 5.39 If the programme were stopped, the school would need the equivalent of an additional three classroom spaces. If this were to be the case, the Council would need to consider reducing the capacity of the school back to 315 or put in additional temporary buildings with a current estimated cost of approximately £600,000.
- 5.40 In addition to the cost of the new building, the EFA have allocated a capital grant estimated to be £142,800 for the cost of furniture and equipment for the additional projected to be 105 pupils on role if these proposals are approved.
- 5.41 **School Playing Fields** – (paragraph 4.65) The Decision Maker will need to be satisfied that the premises will meet minimum requirements of The Education (School Premises) Regulations 1999.
- 5.42 The EFA and DFE have confirmed that the site is sufficient for the proposed development of a new 420 place school, with a maintained nursery of 26 full time equivalent places.
- 5.43 **The views of interested parties** – (paragraphs 4.60). Decision Makers should consider the views of all those affected by the proposals or who have an interest in them including: pupils; families of pupils; staff; other schools and colleges; local residents; diocesan bodies and other providers; LAs; and the Early Years Development and Childcare Partnership if one exists, or any local partnership or group that exists in place of an EYDCP (where proposals affect early years and/or childcare provision). This includes statutory objections and comments submitted during the representation period.
- 5.44 All responses to the consultation to increase the current capacity of the school are included in section 4 of the report. One response was received following the publication of the statutory notice but it did not object to the proposal.
- 5.45 In considering proposals, the Decision Maker can decide to:
- a. Reject the proposals;
 - b. Approve the proposals;
 - c. Approve the proposals with a modification (e.g. the proposal implementation date);
 - d. Approve the proposals subject to them meeting a specific condition.

6 CONCLUSIONS

- 6.1 The statutory proposal is to expand Broadoak Primary School from a one and a half form entry primary school to two forms of entry. This will increase the school's capacity from 315 to 420 and increase the published admission number from 45 to 60 for each admission intake. It is proposed that there would be a two form entry in September 2015 and in each subsequent year so that the school would have a capacity of 420 by September 2020, together with an expanded nursery which will have 26 full time equivalent places.
- 6.2 Following the statutory consultation during which only 3 responses were received, the statutory notice was published on 17 October 2013, with a closing date of 22 November 2013. The notice complied with all statutory requirements. There was one response to the statutory notice but it did not object to the proposal.

- 6.3 The recommendations contained within this report will allow the proposals for a replacement school to move to the next stage within the Priority School Building Programme and secure funding.
- 6.4 There has been a significant increase in the birth rate in Ashton as well as Tameside as a whole. Tameside Council has successfully secured funding through the Priority School Building Programme to rebuild Broadoak Primary School, as a 2 form entry primary school. There is a risk that if the proposals to approve the increase in the capacity of the school to 420 places are not approved, that the Priority School Building Programme could be delayed or cancelled as certainty of the capacity of the proposed new school building needs to be determined before the design stage can progress to the next stages.
- 6.5 The proposals will enable the removal of 100% of the current condition, suitability and access deficiencies of the current multiple buildings on the school site removing the Council's and the schools financial and operational risk relating to addressing these issues in the medium and long term. The replacement of the current school buildings with a purpose designed single building will support the improvement of standards and aspirations of pupils attending the schools and their families.
- 6.6 The increase in capacity of 105 primary school places, in a new building will reduce the Council's risks in respect of its responsibility to provide sufficient and suitable places.

7 RECOMMENDATIONS

- 7.1 As set out on the front of the report.



**Broadoak Primary School
Proposal to increase the capacity of the school
Consultation Document**

September 2013

Proposal

To increase the current capacity of Broadoak Primary School from a one and a half form entry primary school to a 2 form entry. This will increase the schools capacity from 315 to 420 and increase the published admission number from 45 to 60 for each admission intake, including a 52 part time equivalent nursery from September 2015.

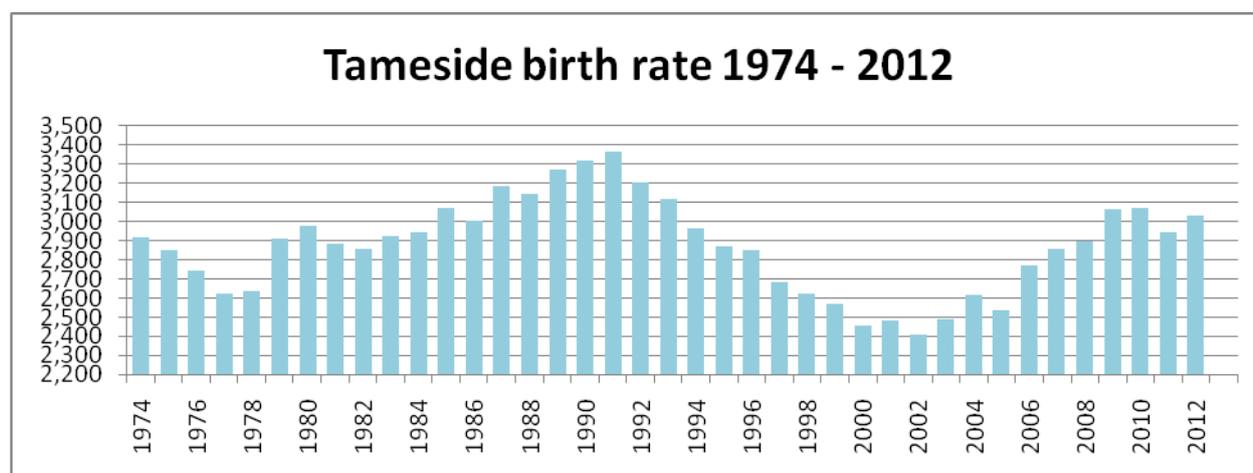
Priority School Building Programme

In July 2011, the government launched the Priority Schools Building Programme, aimed at rebuilding and refurbishing the country’s most dilapidated schools. The programme’s objectives were to address schools with the highest outstanding building condition needs, as well as to meet the increasing demand for school places. Tameside Council has been successful in securing support under the Priority School Building Programme for four schools those being Broadoak Primary School, together with Silver Springs Academy in Stalybridge, Flowery Field Primary School in Hyde and Holden Clough Community Primary School, in Ashton u Lyne.

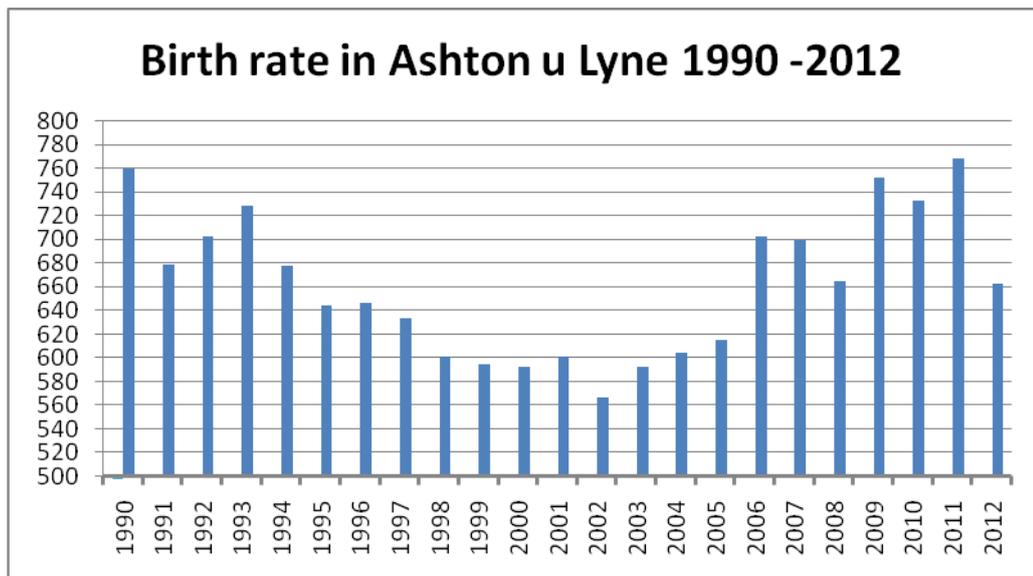
Rationale for an increase in capacity at the school

Tameside Council constantly reviews school places in the borough and takes into account a range of factors when predicting the number of school places needed.

The main indicator for the number of primary places needed is the birth rate in the borough. The graph below illustrates the birth rates in Tameside over the last 38 years cycle.



As can be seen, the birth rate has increased significantly in Tameside between 2005 and 2010 with a 21% increase, births are now around 3,000 per year. The birth rate in Ashton mirrors the Tameside trend as illustrated below:



The fluctuation in the birth rate over a period of time is called the birth rate cycle. In Tameside, this cycle is approximately 25 years from peak birth rate to peak birth rate so we are predicting that the birth rate is likely to increase for at least another 5 years peaking in 2016, for intake into primary schools in 2020.

Another factor in planning school places is the amount of new housing development being planned in the borough. Tameside's core strategy is the key compulsory local development document. Every local development document is built on the principles set out in the core strategy, regarding the development and use of land in Tameside's planning area. The core strategy is currently being reviewed and it is predicted that an additional 11,000 houses will be built in the borough, over the next 15 years. This will require approximately an additional 4,000 school places in total or 330 school places per year group.

The Council is planning to introduce both permanent and temporary places into the primary school system, across the borough to cover the projected increase. It is expected that birth rates will reduce back again across the Borough, however when this occurs, it is not anticipated to be in the local Ashton area, where birth rates are projected to remain high and which drives the need for permanent primary school places in this area.

The Council has a statutory duty under the Education Act 2011, to secure sufficient and suitable places for pupils in its area. Taking into account the range of factors above, this consultation proposes that the replacement Broadoak Primary School building, is designed to accommodate 420 pupils, an increase of 105 pupils to support the satisfaction of the need for additional places in this area under the Priority School Building Programme.

Timescales

A new school will be built in accordance with the Department for Education projected timescales; the indicative programme for this is as follows;

- Procurement Process from June 2013;
- Design of school from July 2013
- Planning approval from November 2013
- Construction from May 2014, onwards with an approximate timescale for the build of 12 months.

How to make your views known

It is important to stress that **no decisions have been made**. Tameside Council wishes to consult widely, particularly with parents and the school. Statutory proposals are required for a proposed enlargement of the premises of the school, which would increase the capacity of the school by more than 30 pupils and there are 5 statutory stages for a statutory proposal for an excepted expansion:

1. A Consultation Period will commence on the **16 September 2013 until the 14 October 2013**;
2. A statutory notice will be published in the local press on the **17 October 2013**;
3. Representation – a period in which comments on proposals can be made including objections and expressions of support for proposals which will commence on **17 October 2013 until 22 November 2013**
4. Council Decision on proposals - the Council will consider a Key Decision Report, taking into account feedback received during the consultation process. A meeting will be held to consider the Key Decision report and this will take place **within 2 months** of the closing date of the consultation. At the meeting, the Cabinet Deputy will make a decision based on recommendations contained in the Key Decision Report
5. Implementation – the decisions will be implemented after the Key Decision meeting

The initial consultation period

The initial consultation period will run from 16 September 2013 to 14 October 2013. As part of the consultation process there will be consultation meetings with staff, governors, and parents from primary schools as appropriate as well as local councillors, unions and interested parties. There will be separate meetings for staff, governors and parents. Council officers will consult with parents on a 1:1 basis at the school meetings.

All representations must be made in writing and a response sheet is attached to the back of this document for you to comment on the proposal. All those interested in responding to the consultation are invited to comment in writing or by returning the attached response form to:

Catherine Moseley
Head of Access and Inclusion
Room 2.111, Council Offices
Wellington Road
Ashton Under Lyne
Lancs
OL6 6DL

Email: catherine.moseley@tameside.gov.uk no later than **Monday 14 October 2013**.



**Broadoak Primary School
Proposal to increase the capacity of the school
Consultation Response Form**

Please give all the details you can:

Name

Address

Email

I am (please tick one box)

Parent/carer	<input type="checkbox"/>	School Governor	<input type="checkbox"/>	Staff member	<input type="checkbox"/>
At (please name the school)					
I am not in one of the above categories but still wish to comment on the proposals					<input type="checkbox"/>

I wish to make a comment on the following proposals

Proposal	Comment (please continue on a separate sheet if necessary)
To increase the capacity of Broadoak Primary School from 315 pupils to 420 pupils.	

Please return this completed form to:

Catherine Moseley
Head of Access and Inclusion
Room 2.111, Council Offices
Wellington Road
Ashton Under Lyne
Lancs
OL6 6DL

Email: catherine.moseley@tameside.gov.uk no later than **Monday 14 October 2013**.

APPENDIX 2

Tameside Metropolitan Borough Council Education and Inspections Act 2006

NOTICE OF PROPOSAL

Proposal to enlarge Flowery Field Primary School

NOTICE IS GIVEN in accordance with section 19(1) of the Education and Inspections Act 2006 that Tameside MBC intends to make a prescribed alteration to Flowery Field Primary School, Main Street, Off Old Road, Hyde, SK14 4SN from 01 September 2014.

The proposal is to enlarge Flowery Field Primary School from a two form entry primary school to a three form entry. This will increase the school's capacity from 420 to 630 and increase the published admission number from 60 to 90 for each admission intake. It is proposed that there would be a three form entry in September 2014 and in each subsequent year so that the school would have a capacity of 630 by September 2020, together with the existing nursery which has 26 full time equivalent places.

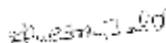
The current capacity of the school is 420 and the proposed capacity will be 630. The current number of pupils registered at the school is 398. The current admission number for the school is 60 and the proposed admission number will be 90.

This Notice is an extract from the complete proposal. Copies of the complete proposal can be obtained from Catherine Moseley, Head of School Support and Access to Learning, Council Offices, Wellington Road, Ashton under Lyne, OL6 6DL or on the website:
<http://www.tameside.gov.uk/schools/organisation/reviews>

Within four weeks from the date of publication of these proposals, any person may object to or make comments on the proposal for Flowery Field Primary School by sending written representations by 12 noon on the 28 March 2013 to:

Catherine Moseley
Head of School Support and Access to Learning
Room 2.111, Council Offices
Wellington Road
Ashton under Lyne, Lancs, OL6 6DL
Email: catherine.moseley@tameside.gov.uk

Signed:



Elaine Todd, Assistant Executive Director, Asset and Investment Partnership Management

Publication Date: 27 February 2013

Explanatory Notes

This proposal is linked to the building of a new school building for Flowery Field Primary School on the current school site. This has been agreed as part of the Primary School Building Programme. Pupils will remain in the current school building whilst the new school is constructed.

APPENDIX 3

Stage 4 – Decision (Paragraphs 4.1-4.80)

Statutory Guidance for Decision Makers

Who Will Decide the Proposals? (Paragraphs 4.1-4.4)

- 4.1 Decisions on school organisation proposals are taken by the LA or by the schools adjudicator. In this chapter both are covered by the form of words “Decision Maker” which applies equally to both.
- 4.2 Section 21 of the EIA 2006 provides for regulations to set out who must decide proposals for any prescribed alterations (i.e. including expansions). The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 (SI:2007 No. 1289) (as amended) make detailed provision for the consideration of prescribed alteration proposals (see in particular Schedules 3 and 5). Decisions on expansions will be taken by the LA with some rights of appeal to the schools adjudicator. Only if the prescribed alteration proposals are “related” to other proposals that fall to be decided by the schools adjudicator, will the LA not be the decision maker in the first instance.
- 4.3 If the LA fail to decide proposals within 2 months of the end of the representation period the LA must forward proposals, and any received representations (i.e. not withdrawn in writing), to the schools adjudicator for decision. They must forward the proposals within one week from the end of the 2 month period.
- 4.4 The Department does not prescribe the process by which an LA carries out their decision-making function (e.g. full Cabinet or delegation to Cabinet member or officials). This is a matter for the LA to determine but the requirement to have regard to statutory guidance (see paragraph 4.15 below) applies equally to the body or individual that takes the decision.

Who Can Appeal Against an LA Decision? (Paragraphs 4.5-4.6)

- 4.5 The following bodies may appeal against an LA decision on school expansion proposals:
- the local Church of England diocese;
 - the bishop of the local Roman Catholic diocese;
 - the LSC where the school provides education for pupils aged 14 and over;
 - the governing body of a community school that is proposed for expansion; and
 - the governors and trustees of a foundation (including Trust) or voluntary school that is proposed for expansion.
- 4.6 Any appeals must be submitted to the LA within 4 weeks of the notification of the LA’s decision. On receipt of an appeal the LA must then send the proposals, and the representations received (together with any comments made on these representations by the proposers), to the schools adjudicator within 1 week of the receipt of the appeal. The LA should also send a copy of the minutes of the LA’s meeting or other record of the decision and any relevant papers. Where the proposals are “related” to other proposals, all the “related” proposals must also be sent to the schools adjudicator.

Checks on Receipt of Statutory Proposals (Paragraph 4.7)

- 4.7 There are 4 key issues which the Decision Maker should consider before judging the respective factors and merits of the statutory proposals:
- Is any information missing? If so, the Decision Maker should write immediately to the proposer specifying a date by which the information should be provided;

- Does the published notice comply with statutory requirements? (see paragraph 4.8 below);
- Has the statutory consultation been carried out prior to the publication of the notice? (see paragraph 4.9 below);
- Are the proposals “related” to other published proposals? (see paragraphs 4.10 to 4.14 below).

Does the Published Notice Comply with Statutory Requirements? (Paragraph 4.8)

- 4.8 The Decision Maker should consider whether the notice is valid as soon as a copy is received. Where a published notice does not comply with statutory requirements - as set out in The School Organisation (Prescribed Alterations)(England) Regulations 2007 (SI:2007 - 1289) (as amended) - it may be judged invalid and the Decision Maker should consider whether they can decide the proposals.

Has the Statutory Consultation Been Carried Out Prior to the Publication of the Notice? (Paragraph 4.9)

- 4.9 Details of the consultation must be included in the proposals. The Decision Maker should be satisfied that the consultation meets statutory requirements (see Stage 1 paragraphs 1.2–1.4). If some parties submit objections on the basis that consultation was not adequate, the Decision Maker may wish to take legal advice on the points raised. If the requirements have not been met, the Decision Maker may judge the proposals to be invalid and needs to consider whether they can decide the proposals. Alternatively the Decision Maker may take into account the sufficiency and quality of the consultation as part of their overall judgement of the proposals as a whole.

Are the Proposals Related to Other Published Proposals? (Paragraphs 4.10-4.14)

- 4.10 Paragraph 35 of Schedule 3, and Paragraph 35 of Schedule 5, to The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 (as amended) provides that any proposals that are “related” to particular proposals (e.g. for a new school; school closure; prescribed alterations to existing schools i.e. change of age range, acquisition of a Trust, addition of boarding, etc; or proposals by the LSC to deal with inadequate 16-19 provision) must be considered together. This does not include proposals that fall outside of School Organisation Prescribed Alteration or Establishment and Discontinuance regulations e.g. removal of a Trust, opening of an Academy, federation proposals. Paragraphs 4.11-4.14 provide statutory guidance on whether proposals should be regarded as “related”.
- 4.11 Generally, proposals should be regarded as “related” if they are included on the same notice (unless the notice makes it clear that the proposals are not “related”). Proposals should be regarded as “related” if the notice makes a reference to a link to other proposals (published under School Organisation and Trust regulations). If the statutory notices do not confirm a link, but it is clear that a decision on one of the proposals would be likely to directly affect the outcome or consideration of the other, the proposals should be regarded as “related”.
- 4.12 Where proposals are “related”, the decisions should be compatible e.g. if one set of proposals is for the removal of provision, and another is for the establishment or enlargement of provision for displaced pupils, both should be approved or rejected.
- 4.13 Where proposals for an expansion of a school are “related” to proposals published by the local LSC which are to be decided by the Secretary of State, the Decision Maker must defer

taking a decision until the Secretary of State has taken a decision on the LSC proposals. This applies where the proposals before the Decision Maker concern:

- the school that is the subject of the LSC proposals;
- any other secondary school, maintained by the same LA that maintains a school that is the subject of the LSC proposals; or
- any other secondary school in the same LA area as any FE college which is the subject of the LSC proposals.

4.14 The proposals will be regarded as “related” if their implementation would prevent or undermine effective implementation of the LSC proposals.

Statutory Guidance – Factors to be Considered by Decision Makers (Paragraphs 4.15-4.16)

4.15 Regulation 8 of The Regulations provides that both the LA and schools adjudicator must have regard to guidance issued by the Secretary of State when they take a decision on proposals. Paragraphs 4.17 to 4.73 below contain the statutory guidance.

4.16 The following factors should not be taken to be exhaustive. Their importance will vary, depending on the type and circumstances of the proposals. All proposals should be considered on their individual merits.

EFFECT ON STANDARDS AND SCHOOL IMPROVEMENT

A System Shaped by Parents (Paragraphs 4.17-4.18)

4.17 The Government's aim, as set out in the Five Year Strategy for Education and Learners and the Schools White Paper Higher Standards, Better Schools For All, is to create a schools system shaped by parents which delivers excellence and equity. In particular, the Government wishes to see a dynamic system in which:

- weak schools that need to be closed are closed quickly and replaced by new ones where necessary; and
- the best schools are able to expand and spread their ethos and success.

4.18 The EIA 2006 amends the Education Act 1996 to place duties on LAs to secure diversity in the provision of schools and to increase opportunities for parental choice when planning the provision of schools in their areas. In addition, LAs are under a specific duty to respond to representations from parents about the provision of schools, including requests to establish new schools or make changes to existing schools. The Government's aim is to secure a more diverse and dynamic schools system which is shaped by parents. The Decision Maker should take into account the extent to which the proposals are consistent with the new duties on LAs.

Standards (Paragraphs 4.19-4.20)

4.19 The Government wishes to encourage changes to local school provision which will boost standards and opportunities for young people, whilst matching school place supply as closely as possible to pupils' and parents' needs and wishes.

4.20 Decision Makers should be satisfied that proposals for a school expansion will contribute to raising local standards of provision, and will lead to improved attainment for children and young people. They should pay particular attention to the effects on groups that tend to under-perform including children from certain ethnic groups, children from deprived backgrounds and children in care, with the aim of narrowing attainment gaps.

Diversity (Paragraphs 4.21-4.23)

- 4.21 Decision Makers should be satisfied that when proposals lead to children (who attend provision recognised by the LA as being reserved for pupils with special educational needs) being displaced, any alternative provision will meet the statutory SEN improvement test (see paragraphs 4.69-4.72).
- 4.22 The Government's aim is to transform our school system so that every child receives an excellent education – whatever their background and wherever they live. A vital part of the Government's vision is to create a more diverse school system offering excellence and choice, where each school has a strong ethos and sense of mission and acts as a centre of excellence or specialist provision.
- 4.23 Decision Makers should consider how proposals will contribute to local diversity. They should consider the range of schools in the relevant area of the LA and whether the expansion of the school will meet the aspirations of parents, help raise local standards and narrow attainment gaps.

Every Child Matters (Paragraph 4.24)

- 4.24 The Decision Maker should consider how proposals will help every child and young person achieve their potential in accordance with "Every Child Matters" principles which are: to be healthy; stay safe; enjoy and achieve; make a positive contribution to the community and society; and achieve economic well-being. This should include considering how the school will provide a wide range of extended services, opportunities for personal development, access to academic and applied learning training, measures to address barriers to participation and support for children and young people with particular needs, e.g. looked after children or children with special educational needs (SEN) and disabilities.

SCHOOL CHARACTERISTICS

Boarding Provision (Paragraphs 4.25-4.26)

- 4.25 In making a decision on proposals that include the expansion of boarding provision, the Decision Maker should consider whether or not there would be a detrimental effect on the sustainability of boarding at another state maintained boarding school within one hour's travelling distance of the proposed school.
- 4.26 In making a decision on proposals for expansion of boarding places the Decision Maker should consider:-
- a. the extent to which boarding places are over subscribed at the school and any state maintained boarding school within an hour's travelling distance of the school at which the expansion is proposed;
 - b. the extent to which the accommodation at the school can provide additional boarding places;
 - c. any recommendations made in the previous CSCI/Ofsted reports which would suggest that existing boarding provision in the school failed significantly to meet the National Minimum Standards for Boarding Schools;
 - d. the extent to which the school has made appropriate provision to admit other categories of pupils other than those for which it currently caters (e.g. taking pupils of the opposite sex or sixth formers) if they form part of the expansion;
 - e. any impact of the expansion on the continuity of education of boarders currently in the school;
 - f. the extent to which the expansion of boarding places will help placements of pupils with an identified boarding need; and

- g. the impact of the expansion on a state maintained boarding school within one hour's travelling distance from the school which may be undersubscribed.

Equal Opportunity Issues (Paragraphs 4.27)

- 4.27 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 needs to 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.

NEED FOR PLACES

Creating Additional Places (Paragraphs 4.28-4.30)

- 4.28 The Decision Maker should consider whether there is a need for the expansion and should consider the evidence presented for the expansion such as planned housing development or demand for provision. The Decision Maker should take into account not only the existence of spare capacity in neighbouring schools, but also the quality and popularity with parents of the schools in which spare capacity exists and evidence of parents' aspirations for places in the school proposed for expansion. The existence of surplus capacity in neighbouring less popular or successful schools should not in itself prevent the addition of new places.
- 4.29 Where the school has a religious character, or follows a particular philosophy, the Decision Maker should be satisfied that there is satisfactory evidence of sufficient demand for places for the expanded school to be sustainable.
- 4.30 Where proposals will add to surplus capacity but there is a strong case for approval on parental preference and standards grounds, the presumption should be for approval. The LA in these cases will need to consider parallel action to remove the surplus capacity thereby created.

Expansion of Successful and Popular Schools (Paragraph 4.31-4.34)

- 4.31 The Government is committed to ensuring that every parent can choose an excellent school for their child. We have made clear that the wishes of parents should be taken into account in planning and managing school estates. Places should be allocated where parents want them, and as such, it should be easier for successful and popular primary and secondary schools to grow to meet parental demand. For the purposes of this guidance, the Secretary of State is not proposing any single definition of a successful and popular school. It is for the Decision Maker to decide whether a school is successful and popular, however, the following indicators should all be taken into account:
 - a. the school's performance;
 - i. in terms of absolute results in key stage assessments and public examinations;
 - ii. by comparison with other schools in similar circumstances (both in the same LA and other LAs);
 - iii. in terms of value added;
 - iv. in terms of improvement over time in key stage results and public examinations.

- b. the numbers of applications for places;
 - i. the Decision Maker should also take account of any other relevant evidence put forward by schools.

4.32 The strong presumption is that proposals to expand successful and popular schools should be approved. In line with the Government's long standing policy that there should be no increase in selection by academic ability, this presumption does not apply to grammar schools or to proposals for the expansion of selective places at partially selective schools.

4.33 The existence of surplus capacity in neighbouring less popular schools should not in itself be sufficient to prevent this expansion, but if appropriate, in the light of local concerns, the Decision Maker should ask the LA how they plan to tackle any consequences for other schools. The Decision Maker should only turn down proposals for successful and popular schools to expand if there is compelling objective evidence that expansion would have a damaging effect on standards overall in an area, which cannot be avoided by LA action.

4.34 Before approving proposals the Decision Maker should confirm that the admission arrangements of schools proposed for expansion fully meet the provisions of the School Admissions Code. Although the Decision Maker may not modify proposed admission arrangements, the proposer should be informed that proposals with unsatisfactory admission arrangements are unlikely to be approved, and given the opportunity to revise them in line with the Code of Practice. Where the LA, rather than the governing body, is the admissions authority, we will expect the authority to take action to bring the admission arrangements in to line with the School Admissions Code.

Travel and Accessibility for All (Paragraphs 4.35-4.36)

4.35 In considering proposals for the reorganisation of schools, Decision Makers should satisfy themselves that accessibility planning has been properly taken into account. Facilities are to be accessible by those concerned, by being located close to those who will use them, and the proposed changes should not adversely impact on disadvantaged groups.

4.36 In deciding statutory proposals, the Decision Maker should bear in mind that proposals should not have the effect of unreasonably extending journey times or increasing transport costs, or result in too many children being prevented from travelling sustainably due to unsuitable routes e.g. for walking, cycling etc.

16-19 Provision (Paragraphs 4.37-4.52)

4.37 The pattern of 16-19 provision differs across the country. Many different configurations of school and college provision deliver effective 14-19 education and training. An effective 14-19 organisation has a number of key features:

- standards and quality: the provision available should be of a high standard – as demonstrated by high levels of achievement and good completion rates;
- progression: there should be good progression routes for all learners in the area, so that every young person has a choice of the full range of options within the 14-19 entitlement, with institutions collaborating as necessary to make this offer. All routes should make provision for the pastoral, management and learning needs of the 14-19 age group;
- participation: there are high levels of participation in the local area; and,
- learner satisfaction: young people consider that there is provision for their varied needs, aspirations and aptitudes in a range of settings across the area.

4.38 Where standards and participation rates are variable, or where there is little choice, meaning that opportunity at 16 relies on where a young person went to school, the case for

reorganisation, or allowing high quality providers to expand, is strong.

- 4.39 Where standards and participation rates are consistently high, collaboration is strong and learners express satisfaction that they have sufficient choice, the case for a different pattern of provision is less strong. The Decision Maker therefore will need to take account of the pattern of 16-19 provision in the area and the implications of approving new provision.

Addition of post 16 provision by “high performing” schools (Paragraphs 4.40-4.51)

- 4.40 The Government remains committed to the principle that high performing 11-16 schools should be allowed to add post-16 provision where there is parental and student demand, in order to extend quality and choice. But the context in which this principle will operate is changing. From April 2010, the Apprenticeships, Skills, Children and Learning Act 2009 will transfer the responsibility for 16-19 planning and funding from the LSC to LAs. LAs will be responsible for maintaining an effective and coherent system of 14-19 organisation which delivers the new entitlement – to a new curriculum and new qualifications, including all 17 Diploma lines from 2013 and an Apprenticeship place for those who meet the entry criteria - to all young people in their area. Collaboration will be a key feature of 14-19 provision.
- 4.41 So, while there is still a strong presumption of approval for proposals from high performing schools, that decision should now be informed by additional factors: the need for local collaboration; the viability of existing post-16 providers in the local area; and the improvement of standards at the school that is proposing to add post-16 provision. Only in exceptional circumstances,* would these factors lead Decision Makers not to approve a proposal. If the Decision Maker were minded not to approve a proposal, he should first consider whether modification of the proposal would enable the proposer to comply with these conditions (see paragraph 4.49).

* Exceptional circumstances in which the Decision Maker might reject the proposal to add a sixth form to a presumption school would include if there is specific evidence that a new sixth form was of a scale that it would directly affect the viability of another neighbouring, high quality institution that itself was not large in comparison to other institutions of that type. Exceptional circumstances might also include a situation where there are a number of presumption schools in the same area at the same time and/or where there is clear evidence that the scale of the aggregate number of additional 16-18 places far exceeds local need and affordability and is therefore clearly poor value for money.

- 4.42 There should be a strong presumption in favour of the approval of proposals for a new post-16 provision where:
- a. the school is a high performing specialist school that has opted for an applied learning specialism; or
 - b. the school, whether specialist or not, meets the DCSF criteria for ‘high performing’ and does not require capital support.
- 4.43 The school should ensure that, in forwarding its proposals to the Decision Maker, it provides evidence that it meets one of the criteria at paragraph 4.42 above.
- 4.44 Where a new sixth form is proposed by a specialist school that has met the ‘high performing’ criteria and which has opted for an applied learning specialism, capital funding may be available from the 16-19 Capital Fund.
- 4.45 This presumption will apply to proposals submitted to the Decision Maker within:
- a. two years from the date a school commences operation with applied learning specialist school status; or

- b. two years from the date a school is informed of its Ofsted Section 5 inspection results which would satisfy DfE criteria for 'high performing' status.

NOTE: 'submitted to the Decision Maker' above refers to when proposals and representations are with the Decision Maker, following the end of the representation period.

- 4.46 The increase in the period in which a school is eligible to expand its post-16 provision recognises the time required to embed the new presumption places within a local 14-19 delivery plan and for effective collaboration to take place.
- 4.47 New post-16 provision in schools should, as appropriate, operate in partnership with other In assessing proposals from 'high performing' schools to add post-16 provision, Decision Makers should look for:
 - a. evidence of local collaboration in drawing up the presumption proposal; and
 - b. a statement of how the new places will fit within the 14-19 organisation in an area; and
 - c. evidence that the exercise of the presumption is intended to lead to higher standards and better progression routes at the 'presumption' school.
- 4.48 If a school has acted in a collaborative way and has actively attempted to engage other partners in the local area, but it is clear that other institutions have declined to participate, that fact should not be a reason for declining to approve a proposal. The onus is on other providers to work with a school which qualifies for the presumption of approval for new post-16 provision.
- 4.49 The Decision Maker should only turn down proposals to add post-16 provision from schools eligible for the sixth form presumption if there is compelling and objective evidence that the expansion would undermine the viability of an existing high quality post-16 provider or providers. The fact that an existing school or college with large numbers of post-16 students might recruit a smaller number of students aged 16-19 is not, of itself, sufficient to meet this condition, where the "presumption" school can show that there is reasonable demand from students to attend the school after age 16.
- 4.50 The existence of surplus capacity in neighbouring schools or colleges that are not high performing should not be a reason to reject a post-16 presumption proposal. It is the responsibility of the LA to consider decommissioning poor quality provision as well as commissioning high quality provision. The LA should therefore plan to tackle any consequences of expansion proposals for other schools.
- 4.51 Before approving proposals the Decision Maker should confirm that the admission arrangements of schools proposed for expansion fully meet the provisions of the mandatory Schools Admissions Code. Although the Decision Maker may not modify proposed admission arrangements, the proposer should be informed that proposals with unsatisfactory admission arrangements are unlikely to be approved, and given the opportunity to revise them in line with the Code. Where the LA, rather than the governing body, is the admissions authority, we will expect the authority to take action to bring the admission arrangements into line with the School Admissions Code.

Conflicting Sixth Form Reorganisation Proposals (Paragraph 4.52)

- 4.52 Where the implementation of reorganisation proposals by the LSC conflict with other published proposals put to the Decision Maker for decision, the Decision Maker is prevented (by the School Organisation Proposals by the LSC for England Regulations 2003) from making a decision on the "related" proposals until the Secretary of State has decided the LSC proposals (see paragraphs 4.13 to 4.14 above).

16-19 Provision 'Competitions' (Paragraphs 4.53-4.56)

- 4.53 Non-statutory competitions for new 16-19 provision were introduced from January 2006. They are administered by the regional arm of the LSC, in line with the LSC's current role as commissioner of 16-19 provision. The Government intends to transfer the responsibility for 16-19 provision from the LSC to LAs from 2010.
- 4.54 The current arrangements for the establishment of new institutions by competition involves a two-stage approval process:
- a. the competition selection process;
 - b. approval of the outcome by existing processes (e.g. Decision Maker approval of school/LA proposals and Secretary of State approval of college/LSC proposals, as required by law).
- 4.55 Competitors will be eligible to apply to the 16-19 Capital Fund. Where a competition is 'won' by a school, they must then publish statutory proposals and these must be considered by the Decision Maker on their merits.
- 4.56 Where proposals to establish sixth forms are received, and the local LSC is running a 16-19 competition, the Decision Maker must take account of the competition when considering the proposals.

FUNDING AND LAND

Capital (Paragraphs 4.57-4.59)

- 4.57 The Decision Maker should be satisfied that any land, premises or capital required to implement the proposals will be available. Normally, this will be some form of written confirmation from the source of funding on which the promoters rely (e.g. the LA, DCSF, or LSC). In the case of an LA, this should be from an authorised person within the LA, and provide detailed information on the funding, provision of land and premises etc.
- 4.58 Where proposers are relying on DCSF as a source of capital funding, there can be no assumption that the approval of proposals 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 proposals should be rejected, or consideration of them deferred until it is clear that the capital necessary to implement the proposals will be provided.
- 4.59 Proposals should not be approved conditionally upon funding being made available, subject to the following specific exceptions: For proposals being funded under the Private Finance Initiative (PFI) or through the BSF programme, the Decision Maker should be satisfied that funding has been agreed 'in principle', but the proposals should be approved conditionally on the entering into of the necessary agreements and the release of funding. A conditional approval will protect proposers so that they are not under a statutory duty to implement the proposals until the relevant contracts have been signed and/or funding is finally released.

Capital Receipts (Paragraphs 4.60-4.62)

- 4.60 Where the implementation of proposals may depend on capital receipts from the disposal of land used for the purposes of a school (i.e. including one proposed for closure in "related" proposals) the Decision Maker should confirm whether consent to the disposal of land is required, or an agreement is needed, for disposal of the land. Current requirements are:
- a. Community Schools – the Secretary of State's consent is required under paragraph 2 of Schedule 35A to the Education Act 1996 and, in the case of playing field land, under section 77 of the Schools Standards and Framework Act 1998 (SSFA 1998).

- b. Foundation (including Trust) and Voluntary Schools:
- i. playing field land – the governing body, foundation body or trustees will require the Secretary of State’s consent, under section 77 of the SSFA 1998, to dispose, or change the use of any playing field land that has been acquired and/or enhanced at public expense.
 - ii. non-playing field land or school buildings – the governing body, foundation body or trustees no longer require the Secretary of State’s consent to dispose of surplus non-playing field land or school buildings which have been acquired or enhanced in value by public funding. They will be required to notify the LA and seek local agreement of their proposals. Where there is no local agreement, the matter should be referred to the Schools Adjudicator to determine. (Details of the new arrangements can be found in the Department’s guidance “The Transfer and Disposal of School Land in England: A General Guide for Schools, Local Authorities and the Adjudicator”).

4.61 Where expansion proposals are dependent upon capital receipts of a discontinuing foundation or voluntary school the governing body is required to apply to the Secretary of State to exercise his various powers in respect of land held by them for the purposes of the school. Normally he would direct that the land be returned to the LA but he could direct that the land be transferred to the governing body of another maintained school (or the temporary governing body of a new school). Where the governing body fails to make such an application to the Secretary of State, and the school subsequently closes, all land held by them for the purposes of the discontinued school will, on dissolution of the governing body, transfer to the LA unless the Secretary of State has directed otherwise before the date of dissolution.

4.62 Where consent to the disposal of land is required, but has not been obtained, the Decision Maker should consider issuing a conditional approval for the statutory proposals so that the proposals gain full approval automatically when consent to the disposal is obtained (see paragraph 4.75).

New Site or Playing Fields (Paragraph 4.63)

4.63 Proposals dependent on the acquisition of an additional site or playing field may not receive full approval but should be approved conditionally upon the acquisition of a site or playing field.

Land Tenure Arrangements (Paragraph 4.64)

4.64 For the expansion of voluntary or foundation schools it is desirable that a trust, or the governing body if there is no foundation, holds the freehold interest in any additional site that is required for the expansion. Where the trustees of the voluntary or foundation school hold, or will hold, a leasehold interest in the additional site, the Decision Maker will need to be assured that the arrangements provide sufficient security for the school. In particular the leasehold interest should be for a substantial period – normally at least 50 years – and avoid clauses which would allow the leaseholder to evict the school before the termination of the lease. The Decision Maker should also be satisfied that a lease does not contain provisions which would obstruct the governing body or the headteacher in the exercise of their functions under the Education Acts, or place indirect pressures upon the funding bodies.

School Playing Fields (Paragraph 4.65)

- 4.65 The Education (School Premises) Regulations 1999 set out the standards for school premises, including minimum areas of team game playing fields to which schools should have access. The Decision Maker will need to be satisfied that either:
- a. the premises will meet minimum requirements of The Education (School Premises) Regulations 1999; or
 - b. if the premises do not meet those requirements, the proposers have secured the Secretary of State's agreement in principle to grant a relaxation.

Where the Secretary of State has given 'in principle' agreement as at paragraph 4.60(b) above, the Decision Maker should consider issuing conditional approval so that when the Secretary of State gives his agreement, the proposals will automatically gain full approval.

SPECIAL EDUCATIONAL NEEDS (SEN) PROVISION

Initial Considerations (Paragraphs 4.66-4.67)

- 4.66 SEN provision, in the context of School Organisation legislation and this guidance, is provision recognised by the LA as specifically reserved for pupils with special educational needs. When reviewing SEN provision, planning or commissioning alternative types of SEN provision or considering proposals for change LAs should aim for a flexible range of provision and support that can respond to the special educational needs of individual pupils and parental preferences, rather than necessarily establishing broad categories of provision according to special educational need or disability. There are a number of initial considerations for LAs to take account of in relation to proposals for change. They should ensure that local proposals:
- a. take account of parental preferences for particular styles of provision or education settings;
 - b. 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;
 - c. are consistent with the LA's Children and Young People's Plan;
 - d. take full account of educational considerations, in particular the need to ensure a broad and balanced curriculum, including the National Curriculum, within a learning environment in which children can be healthy and stay safe;
 - e. 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;
 - f. 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;
 - g. ensure appropriate provision for 14-19 year-olds, taking account of the role of local LSC funded institutions and their admissions policies; and
 - h. ensure that appropriate full-time education will be available to all displaced pupils. Their statements of special educational needs will require amendment and all parental rights must be ensured. Other interested partners, such as the Health Authority should be involved.
- 4.67 Taking account of the considerations, as set out above, will provide assurance to local communities, children and parents that any reorganisation of SEN provision in their area is

designed to improve on existing arrangements and enable all children to achieve the five Every Child Matters outcomes.

The Special Educational Needs Improvement Test (Paragraph 4.68)

4.68 When considering any reorganisation of provision that would be recognised by the LA as reserved for pupils with special educational needs, including that which might lead to some children being displaced through closures or alterations, LAs, and all other proposers for new schools or new provision, will need to demonstrate to parents, the local community and Decision Makers how the proposed alternative arrangements are likely to lead to improvements in the standard, quality and/or range of educational provision for children with special educational needs. All consultation documents and reorganisation plans that LAs publish and all relevant documentation LAs and other proposers submit to Decision Makers should show how the key factors set out in paragraphs 4.69 to 4.72 below have been taken into account by applying the SEN improvement test. Proposals which do not credibly meet these requirements should not be approved and Decision Makers should take proper account of parental or independent representations which question the LA's own assessment in this regard.

Key Factors (Paragraphs 4.69-4.72)

4.69 When LAs are planning changes to their existing SEN provision, and in order to meet the requirement to demonstrate likely improvements in provision, they should:

a. identify the details of the specific educational benefits that will flow from the proposals in terms of:

- i. improved access to education and associated services including the curriculum, wider school activities, facilities and equipment, with reference to the LA's Accessibility Strategy;
- ii. improved access to specialist staff, both education and other professionals, including any external support and/or outreach services;
- iii. improved access to suitable accommodation; and
- iv. improved supply of suitable places.

b. LAs should also:

- i. obtain a written statement that offers the opportunity for all providers of existing and proposed provision to set out their views on the changing pattern of provision seeking agreement where possible;
- ii. clearly state arrangements for alternative provision. A 'hope' or 'intention' to find places elsewhere is not acceptable. Wherever possible, the host or alternative schools should confirm in writing that they are willing to receive pupils, and have or will have all the facilities necessary to provide an appropriate curriculum;
- iii. specify the transport arrangements that will support appropriate access to the premises by reference to the LA's transport policy for SEN and disabled children; and
- iv. specify how the proposals will be funded and the planned staffing arrangements that will be put in place.

4.70 It is to be noted that any pupils displaced as a result of the closure of a BESD school (difficulties with behavioural, emotional and social development) should not be placed long-term or permanently in a Pupil Referral Unit (PRU) if a special school place is what they need. PRUs are intended primarily for pupils who have been excluded, although LAs can and do use PRU provision for pupils out of school for other reasons such as illness and

teenage pregnancies. There may of course be pupils who have statements identifying that they have BESD who have been placed appropriately in a PRU because they have been excluded; in such cases the statement must be amended to name the PRU, but PRUs should not be seen as an alternative long-term provision to special schools.

- 4.71 The requirement to demonstrate improvements and identify the specific educational benefits that flow from proposals for new or altered provision as set out in the key factors are for all those who bring forward proposals for new special schools or for special provision in mainstream schools including governors of foundation schools and foundation special schools. The proposer needs to consider all the factors listed above.
- 4.72 Decision Makers will need to be satisfied that the evidence with which they are provided shows that LAs and/or other proposers have taken account of the initial considerations and all the key factors in their planning and commissioning in order to meet the requirement to demonstrate that the reorganisation or new provision is likely to result in improvements to SEN provision.

OTHER ISSUES

Views of Interested Parties (Paragraphs 4.73)

- 4.73 The Decision Maker should consider the views of all those affected by the proposals or who have an interest in them including: pupils; families of pupils; staff; other schools and colleges; local residents; diocesan bodies and other providers; LAs; the LSC (where proposals affect 14-19 provision) and the Early Years Development and Childcare Partnership if one exists, or any local partnership or group that exists in place of an EYDCP (where proposals affect early years and/or childcare provision). This includes statutory objections and comments submitted during the representation period. The Decision Maker should not simply take account of the numbers of people expressing a particular view when considering representations made on proposals. Instead the Decision Maker should give the greatest weight to representations from those stakeholders likely to be most directly affected by the proposals.

Types of Decision (Paragraph 4.74)

- 4.74 In considering proposals for the expansion of a school, the Decision Maker can decide to:
- reject the proposals;
 - approve the proposals;
 - approve the proposals with a modification (e.g. the implementation date); or
 - approve the proposals subject to them meeting a specific condition (see paragraph 4.75 below).

Conditional Approval (Paragraphs 4.75-4.76)

- 4.75 The regulations provide for a conditional approval to be given where the Decision Maker is otherwise satisfied that the proposals can be approved, and approval can automatically follow an outstanding event. Conditional approval can only be granted in the limited circumstances specified in the regulations i.e. as follows:
- a. the grant of planning permission under Part 3 of the Town and Country Planning Act 1990;
 - b. the acquisition of any site required for the implementation of the proposals;
 - c. the acquisition of playing fields required for the implementation of the proposals;

- d. the securing of any necessary access to a site referred to in sub-paragraph (b) or playing fields referred to in sub-paragraph (c);
- e. the private finance credit approval given by the DCSF following the entering into a PFI contract by an LA;
- f. the entering into an agreement for any necessary building project supported by the DCSF in connection with BSF programme;
- g. the agreement to any change to admission arrangements specified in the approval, relating to the school or any other school or schools (this allows the approval of proposals to enlarge the premises of a school to be conditional on the decision of adjudicators to approve any related change in admission numbers);
- h. the making of any scheme relating to any charity connected with the school;
- i. the formation of any federation (within the meaning of section 24(2) of the 2002 Act) of which it is intended that the proposed school should form part, or the fulfilling of any other condition relating to the school forming part of a federation;
- j. the Secretary of State giving approval under regulation 5(4) of the Education (Foundation Body) (England) Regulations 2000 to a proposal that a foundation body must be established and that the school must form part of a group for which a foundation must act;
- k. the Secretary of State making a declaration under regulation 22(3) of the Education (Foundation Body) (England) Regulations 2000 that the school should form part of a group for which a foundation body acts;
- l. where the proposals are to alter the upper age limit of the school, the decision of the Secretary of State to establish a new FE college under s16 of the Further and Higher Education Act 1992;
- m. where the proposals in question depend upon any of the events specified in paragraphs (a) to (k) occurring by a specified date in relation to proposals relating to any other school or proposed school, the occurrence of such an event; and
- n. where proposals are related to proposals for the establishment of new schools or discontinuance of schools, and those proposals depend on the occurrence of events specified in regulation 20 of the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007 the occurrence of such an event.

4.76 The Decision Maker must set a date by which the condition must be met, but will be able to modify the date if the proposers confirm (preferably before the date expires), that the condition will be met later than originally thought. The condition-to-be-met-by date must be before the proposed implementation date of the proposal (which can also be modified if necessary). Therefore care should be taken when setting condition-to-be-met-by dates, particularly if proposals are “related” e.g. if a school is proposed to add a sixth form on 1st September one year, and enlarge on 1st September the following year, and the enlargement requires planning permission, the condition set must be met before the addition of a sixth form can be implemented (the earlier proposal). This is because as “related” proposals, they should both have the same decision, which in this case, would have been approval conditional upon planning permission being met. The proposer should inform the Decision Maker and the Department (SOCU, DCSF, Mowden Hall, Staindrop Road, Darlington DL3 9BG or by email to school.organisationproposals@education.gsi.gov.uk) of the date when a condition is

modified or met in order for the Department's records, and those of Edubase to be kept up to date. If a condition is not met by the date specified, the proposals must be referred back to the Decision Maker for fresh consideration.

Decisions (Paragraphs 4.77-4.79)

- 4.77 All decisions must give reasons for the decision, irrespective of whether the proposals were rejected or approved, indicating the main factors/criteria for the decision.
- 4.78 A copy of all decisions must be forwarded to:
- the LA or governing body who published the proposals;
 - the trustees of the school (if any);
 - the Secretary of State (via the School Organisation & Competitions Unit, DCSF, Mowden Hall, Darlington DL3 9BG or by email to school.organisationproposals@education.gsi.gov.uk);
 - where the school includes provision for 14-16 education or sixth form education, the LSC;
 - the local CofE diocese;
 - the bishop of the RC diocese;
 - each objector except where a petition has been received. Where a petition is received a decision letter must be sent to the person who submitted the petition, or where this is unknown, the signatory whose name appears first on the petition; and
 - where the school is a special school, the relevant primary care trust, an NHS trust or NHS foundation trust.
- 4.79 In addition, where proposals are decided by the LA, a copy of the decision must be sent to the Office of the Schools Adjudicator, Mowden Hall, Darlington DL3 9BG. Where proposals are decided by the schools adjudicator, a copy of the decision must be sent to the LA that it is proposed should maintain the school.

Can proposals be withdrawn? (Paragraph 4.80)

- 4.80 Proposals can be withdrawn at any point before a decision is taken. Written notice must be given to the LA, or governing body, if the proposals were published by the LA. Written notice must also be sent to the schools adjudicator (if proposals have been sent to him) and the Secretary of State – i.e. via the School Organisation & Competitions Unit, DCSF, Mowden Hall, Darlington DL3 9BG or by email to school.organisationproposals@education.gsi.gov.uk. Written notice must also be placed at the main entrance to the school, or all the entrances if there are more than one.