

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 4 July 2018	<b>Decision Taker:</b> Cabinet Member for Children, Schools and Adult Care
<b>Report title:</b>		Future of Council Day Nursery Provision - Bishops House and Camberwell	
<b>Ward(s) or groups affected:</b>		Newington, Champion Hill	
<b>From:</b>		Strategic Director of Children's and Adults Services	

## RECOMMENDATIONS

1. To agree to the closure of Bishops House Day Nursery from the 27 July 2018, as set out at paragraph 12.
2. To agree to the re-provision of Camberwell Grove Day Nursery from the 20 July 2018, as set out at paragraph 17.

## BACKGROUND INFORMATION

3. The Council currently directly provides three day nurseries offering childcare for children aged 0-5:
  - Aylesbury Day Nursery
  - Bishops House Day Nursery
  - Camberwell Grove Day Nursery.
4. The financial position of these nurseries has become unviable as a result of Government reductions in early years funding. Southwark's allocation through the Dedicated Schools Grant Early Years Block for 3 & 4 year old children has reduced by £2m over the past two year as follows:

2016-17 000's	2017-18 000's	2018-19 000's
£20,319	£19,260	£18,322

5. The allocation of the Dedicated Schools Grant is agreed on an annual basis by Southwark Schools Forum. In line with the reductions in the Early Years Block, the funding allocated to subsidise the running costs of the Council's three nurseries has been reduced as follows:

	2016-17 000's	2017-18 000's	2018-19 000's
DSG	£966	£274	£0
DSG Reserve	£0	£700	£0
<b>Total</b>	<b>£966</b>	<b>£974</b>	<b>£0</b>

6. Consultation with staff and parents has continued over the past twelve months, while officers have explored options for the future of these nurseries.

7. Following consultation with staff, a new staffing structure and service model for Aylesbury Day Nursery was agreed by the Strategic Director of Children's and Adults Services in December 2017. Whilst this nursery is subject to the same financial pressures as the Council's other nurseries, in this instance the Council has secured additional external funding to enable it to continue as Council run provision. £200k of revenue funding agreed through the Council's partnership agreement with Notting Hill Housing Trust for the regeneration of the Aylesbury Estate has been allocated for this purpose.

## **KEY ISSUES FOR CONSIDERATION**

### **Bishops House Day Nursery**

8. Officers have explored options for the future of this nursery, including seeking an alternative provider to deliver nursery provision for this site. It was established, however, that the costs of delivering a nursery from this building would be prohibitive for any provider. It is a four storey, Grade 2 listed property of which only two storeys are currently used for childcare.
9. Parents were written to by the Director of Education in November 2017 advising them that no satisfactory solution had been found and a parents meeting was held to provide an opportunity for them to express their view on this.
10. A further letter was sent to parents in May 2018 inviting them to make any representations they wished as the Council would be considering the closure of the nursery. As part of this process a meeting was held with parents at the Nursery on 6 June 2018, attended by the Director of Education and the Cabinet Member for Children, Schools and Adults. Parents were generally understanding of the financial position and did not put forward other proposals for consideration. Their main concerns were to ensure smooth transition for their children as they move on to other provision. Officers have been working with parents to offer advice and support on this.
11. Due to uncertainty about the future of the nursery, no new children have been enrolled in 2018. As of June 2018, only 17 children are attending the nursery of which 11 would be due to leave the nursery in any event over the summer to start school in September 2018.
12. It is proposed that the Council ceases to directly provide a nursery at Bishops House from Friday 27 July 2018.
13. Officers are currently exploring other educational uses for the building.

### **Camberwell Grove Day Nursery**

14. Officers have been in discussion with London Early Years Foundation LEYF, a childcare charity with a track record of delivering high quality early years provision, about the possibility of it delivering a nursery at Camberwell Grove.
15. Parents were consulted in writing and via a meeting in July 2017 about their views on seeking a 'not for profit provider to deliver a nursery at Camberwell Grove'. Key concerns raised by parents were to ensure that valued features of the nursery including outdoor space and freshly cooked food would continue under a new provider. This has been confirmed by LEYF during discussions, and this was communicated to parents in a letter following consultation in September 2017.
16. Following the agreement of Heads of Terms between the Council and LEYF, a parents meeting was held in April 2018 at which LEYF outlined its plans for the future of the

nursery. This included a commitment to existing service users being able to continue with current hours and fees. LEYF also committed to detailed transition planning for children, addressing parents' concerns about changes to the staff team.

17. It is proposed that that the council ceases to directly provide a nursery at Camberwell Grove from Friday 20 July 2018, subject to full lease for LEYF to deliver from premises being agreed prior to this date.

### **Consultation**

18. Consultation with service users has included written communication and meetings for parents, as detailed above.
19. A full staff consultation was undertaken in July 2017 and trade unions have been kept informed via regular Divisional Liaison Committee (DLC) meetings.

### **Staffing**

20. The Chief Executive exceptionally agreed in April 2017 to extend the Council's Enhanced Voluntary Severance (EVR) scheme for staff in the Council's nurseries. All staff expressed an interest in taking EVR. There were also opportunities for staff to apply for vacant posts in new structure at Aylesbury. Of the 37 current staff across three nurseries, 9 are due to start new posts in Aylesbury Day Nursery and the remaining 28 are expected to take EVR at the end of July 2018. HR have written final EVR offer letters to staff with figures updated to reflect this date.
21. Posts in the former structure at Aylesbury Day Nursery were deleted through restructure agreed in December 2017, and new posts created. The closure of Camberwell Grove Day Nursery and Bishops House Day Nursery will entail the deletion of 43 remaining posts, of which 17 are currently vacant.

### **Policy implications**

22. The Childcare Act 2006 sets out a duty on local authorities to secure sufficient childcare for working parents in their area. There is no requirement for local authorities to directly provide childcare, and the Act states that a local authority may not provide childcare itself unless it is satisfied:
  - that no other person is willing to provide the childcare or
  - that in the circumstances it is appropriate for the local authority to provide the childcare.
23. The Council's strategy for the three nurseries is not expected to impact negatively on its sufficiency duty. It is anticipated that the number of places available at Camberwell Grove will remain at current level. Bishops House is registered for 49 children, however demand has never reached this level in recent years and there are more than sufficient vacancies locally to offset this loss of places.
24. There are four day nurseries within 800m of Bishops House (1<sup>st</sup> Place Lorrimore Square, SRC Community Nursery, Magic Roundabout Nursery and Elephant and Castle Nursery) with a total of 115 vacant places declared to the Council's Families Information Service.

### **Community impact statement**

25. The Public Sector Equality Duty, at section 149 of the Equality Act, requires public bodies to consider all individuals when carrying out their day to day work – in shaping policy, in delivering services and in relation to their own employees. It requires public bodies to have

due regard when carrying out their activities to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between people with protected characteristics and those with none. The council's Approach to Equality ("the approach") commits the council to ensuring that equality is an integral part of our day to day business.

26. "Protected characteristics" are the grounds upon which discrimination is unlawful - the characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, gender and sexual orientation.
27. Equality analysis of staff indicates that the proposed changes to nursery provision are unlikely to impact on the characteristics of disability, gender reassignment, marriage and civil partnership, religion or belief or sexual orientation. Age, gender and ethnicity are relevant factors as:
  - 36 of the 37 staff across the three nurseries are women;
  - 25 of the 37 staff are aged over fifty, including 4 aged over 60;
  - 30 of the 37 staff are from black or minority ethnic groups.
28. To ameliorate the potential impact of the restructure, approval has been received to offer enhanced voluntary redundancy to staff across the three nurseries.
29. In terms of service users, children attending Camberwell Grove Day Nursery will be able to continue with a different provider.
30. Of the 17 children attending Bishops House at present, 11 would be leaving in any event to start primary school in September 2018. The significant impact of closing the nursery would therefore be restricted to six children. Vacancies have been identified in neighbouring nurseries for children not moving on to school, and support has been offered to help parents find places and arrange transition.

### **Resource Implications**

31. Maintaining council run provision at Bishops House and Camberwell Grove would require significant additional funding to replace the Early Years Block funding previously available to help meet running costs of nurseries.

### **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

#### **Director of Law and Democracy**

32. This is a decision that can be made by the Individual Cabinet Member for Children, Schools and Adult Care in accordance with the scheme of delegation in the council's constitution.
33. Given the prospective closure of a council service, consultation has been carried out with the parents and carers who would be directly affected by the changes. A lawful consultation process requires clear information readily available to consultees, enabling meaningful responses to be made and in a reasonable period of time. Responses received from the consultation must then be taken into account by the decision maker and be given appropriate weight. In this case, the report records the outcomes of consultation with parents and these should be fully taken into account.
34. The report separately refers to the public sector equality duty which requires that due regard be given to the identified aims in the Equality Act. To assist this, an equality impact analysis has been carried out and is attached to the report and should be given due regard when making decision. LEYF have written to parents saying 'Your fees and sessions will remain as

currently agreed with Southwark' (letter, 25 April 2018). There will therefore be no negative changes in terms and conditions, though the nursery will open for longer hours under LEYF management. Accordingly there are no adverse changes that would require a specific equality impact assessment.

35. The report also identifies the relevant Childcare Act duties and indicates how these will continue to be met in the event that these day nurseries are closed.
36. As noted in previous reports relating to the council nursery service over the last year, the Transfer of Undertakings (Protection of Employment) Regulations apply to the granting of a lease to LEYF for the Camberwell Grove site. There are statutory consultation obligations under TUPE and a claim can be pursued by the Trade Union for affected employees if there is a failure in respect of that consultation. Any affected employees may also argue that they should automatically transfer to LEYF. If they do not transfer, and/or because they do not wish to take EVR and/or fail to secure suitable alternative employment at Aylesbury Day Nursery, they may pursue a claim in the Employment Tribunal against both the Council and the external provider. It is confirmed in this report that steps have been taken to reduce this risk by the offer of enhanced voluntary redundancy or alternative posts within the council nursery service.

#### **Strategic Director of Finance and Governance (CAS18/040)**

37. With the withdrawal of the DSG subsidy as required by finance regulations in 2018-19 there has been a pressure on the core budget.
38. The other educational uses for Bishops House as noted in para 13 are yet to be decided.
39. Monies from capital refresh have been allocated for improvement works at Camberwell Grove as a precursor to LEYF taking over provision of a nursery service in the building as noted in para 17 and is subject to an additional delegated item from the Property Service. The outcome of this lease agreement will determine any ongoing costs for this proposal.

#### **Human Resources (HR)**

40. There has been clear communication with all staff and trade unions throughout the process. To facilitate this as noted exceptional approval was sought from the Chief Executive to offer enhanced voluntary redundancy to this staff group. This has been followed up with the staff group (in terms of expressions of interest) with 100% take up from the staff group with the exception of staff who sought and obtained appointment to the new roles in the new Aylesbury nursery structure. In doing so they have obtained suitable alternative roles to those they held within the previous nursery structure.
41. The Council has been clear throughout that a transfer of undertakings protection of employment (TUPE) would occur should a new provider seek to take over one or more of the sites as a going concern. In this regard as part of the discussions with LEYF appropriate reference has been made to TUPE including confirmation that Southwark's existing nursery staff group have either by taking EVR or voluntarily taking other roles within Council left or will be leaving their existing roles within the nursery team on or before the proposed date when LEYF's lease would start.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
None		

## APPENDICES

No.	Title
Appendix 1	Equalities Analysis

## AUDIT TRAIL

<b>Lead Officer</b>	Nina Dohel, Director of Education	
<b>Report Author</b>	Glenn Garcia, Head of Education Access	
<b>Version</b>	Final	
<b>Dated</b>	4 July 2018	
<b>Key Decision</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
HR Strategic Partners	Yes	Yes
<b>Cabinet Member</b>	Yes	No
<b>Date final report sent to Constitutional Team</b>	4 July 2018	

## APPENDIX 1

### Equalities Analysis

Proposed decision to which this equality analysis relates	Future of Council Day Nursery Provision - Bishops House and Camberwell
Date	July 2018

#### Brief description of proposed decision

To close Council run day nursery at Bishops House and reprovide nursery at Camberwell Grove via another provider taking over the running of early years services from the building.

One nursery, Aylesbury Day Nursery, will remain open under Council management.

#### Service users potentially affected

Children under 5 attending nurseries and their parents/carers

#### Staff potentially affected

Nursery managers, practitioners and support staff employed across the Council's three nurseries

#### 1. Staff

##### Age

##### *Potential impact*

Neutral Impact

It is recognised that a significant proportion of the current workforce across the Council's three nurseries are aged over 50 years old (25 out of 39 staff), including 4 staff aged over 60.

AGE	Number
Under 30	0
30 - 39	3
40 - 49	11
50 - 59	21
60 +	4
<b>Totals</b>	<b>39</b>

A potential unintended consequence of the decision is that there would be less postholders in the over 50s age range working in the Council's day nurseries, as there would be less posts overall and this group is over-represented in the current workforce compared with prevalence in the general population.

<p><i>Mitigating actions to be taken</i></p> <p>Staff are being offered Enhanced Voluntary Redundancy terms, and all staff have expressed an interest in taking this.</p> <p>One to one meetings have been offered to all staff, staff aged over 55 have been provided with pension figures and many have expressed a strong wish to take advantage of these terms.</p> <p>Staff were given the opportunity of being considered for posts in a new staffing structure at Aylesbury Day Nursery, this recruitment was carried out in line with Council's reorganisation policy which rules out discrimination on basis of age.</p>
<p><b>Disability</b> - A person has a disability if s/he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.</p>
<p><i>Potential impact</i></p> <p>Neutral impact – there is no evidence that any current staff have a disability</p> <p>No unintended consequences were identified</p>
<p><i>Mitigating actions to be taken:</i></p> <p>N/A</p>
<p><b>Gender reassignment</b> - The process of transitioning from one gender to another.</p>
<p><i>Potential impact</i></p> <p>Neutral impact – there is no evidence that any current staff are undergoing gender reassignment.</p> <p>No unintended consequences were identified.</p>
<p><i>Mitigating actions to be taken:</i></p> <p>N/A</p>
<p><b>Marriage and civil partnership</b> – In England and Wales marriage is no longer restricted to a union between a man and a woman but now includes a marriage between a same-sex couple. Same-sex couples can also have their relationships legally recognised as 'civil partnerships'. Civil partners must not be treated less favourably than married couples and must be treated the same as married couples on a wide range of legal matters. <b>(Only to be considered in respect to the need to eliminate discrimination.)</b></p>
<p><i>Potential impact</i></p> <p>Neutral impact – there is no evidence that this applies to any current staff.</p> <p>No unintended consequences were identified.</p>
<p><i>Mitigating actions to be taken:</i></p> <p>N/A</p>
<p><b>Pregnancy and maternity</b> - Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the</p>

employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth

*Potential impact*

Neutral impact – there is no evidence this applies to any current staff.

No unintended consequences were identified.

*Mitigating actions to be taken:*

N/A

**Race** - Refers to the protected characteristic of Race. It refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins.

*Potential impact*

Neutral impact – It is recognised that a significant proportion of the current workforce across the Council's three nurseries are from Black or other minority ethnic backgrounds – 32 out of 39 staff

Ethnicity	Number
Asian	1
Black, African	11
Black, British	9
Black, Caribbean	5
Black, Other	1
White, British	7
White, Irish	1
White, Other	1
Other, any other group	0
Asian, Other	0
Mixed Other	3
Total	39

A potential unintended consequence of the decision is that in absolute numbers there could be less BME postholders working in the Council's day nurseries, as there would be less posts overall and this group is over-represented in the current workforce compared with prevalence in the general population.

*Mitigating actions to be taken:*

Staff were given the opportunity of being considered for posts in a new staffing structure at Aylesbury Day Nursery, this recruitment was carried out in line with Council's reorganisation policy which rules out discrimination on basis of race.

**Religion and belief** - Religion has the meaning usually given to it but belief includes religious and philosophical beliefs including lack of belief (e.g. Atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition.

*Potential impact*

Neutral impact – there is no evidence that this is a relevant factor in this instance.

No unintended consequences were identified.
<i>Mitigating actions to be taken:</i>
N/A
<b>Sex</b> - A man or a woman.
<i>Potential impact</i>
Neutral impact – almost all of the current staff in the nurseries (38 out of 39) are women.  A potential unintended consequence of the decision is that in absolute numbers there would be less BME postholders working in the Council's day nurseries, as there would be less posts overall and this group is over-represented in the current workforce compared with prevalence in the general population.
<i>Mitigating actions to be taken:</i>
Staff were given the opportunity of being considered for posts in a new staffing structure at Aylesbury Day Nursery, this recruitment was carried out in line with Council's reorganisation policy which rules out discrimination on basis of sex.
<b>Sexual orientation</b> - Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes
<i>Potential impact</i>
Neutral impact – we do not record information on staff sexual orientation, but there is no reason to believe that this would be a factor in the implementation of the decision which will be undertaken in line with the Council's reorganisation policy.  No unintended consequences were identified.

## 2. Service users

<b>Age</b>
<p><i>Potential impact</i></p> <p>Neutral Impact</p> <p>By definition as an early years provision, the children using the service are under 5 years old.</p> <p>Most children currently in the nurseries would be expected to leave to start school in September 2018, regardless of the decision.</p> <p>17 children would remain at Camberwell, and 6 children at Bishops House if these nurseries were to remain open.</p> <p>Key impact on children will be due to a change in staffing at Camberwell, and the necessity to move to another provision as a result of closure of Bishops Hosue</p> <p>Age is not a significant factor in relation to the parents, while data is not collected on their age all of them are adults across the normal range of parent ages.</p>
<p><i>Mitigating actions to be taken</i></p> <p>Camberwell: there will be detailed transition planning with new provider, London Early Years Foundation, to ensure a smooth transition to new staff in the nursery.</p> <p>Bishops House: places have been identified as neighbouring nurseries, and staff at Bishops House will work with new providers to ensure a smooth transition.</p>
<b>Disability</b> - A person has a disability if s/he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.
<p><i>Potential impact</i></p> <p>Neutral impact – none of the children have an EHC Plan. There is no evidence that any current parentsf have a disability</p> <p>No unintended consequences were identified.</p>
<p><i>Mitigating actions to be taken:</i></p> <p>N/A</p>
<b>Gender reassignment</b> - The process of transitioning from one gender to another.
<p><i>Potential impact</i></p> <p>Neutral impact – there is no evidence that this is a relevant factor in this instance.</p> <p>No unintended consequences were identified.</p>
<p><i>Mitigating actions to be taken:</i></p> <p>N/A</p>

**Marriage and civil partnership** – In England and Wales marriage is no longer restricted to a union between a man and a woman but now includes a marriage between a same-sex couple. Same-sex couples can also have their relationships legally recognised as ‘civil partnerships’. Civil partners must not be treated less favourably than married couples and must be treated the same as married couples on a wide range of legal matters. **(Only to be considered in respect to the need to eliminate discrimination.)**

*Potential impact*

Neutral impact – there is no evidence that this is a relevant factor in this instance.

No unintended consequences were identified.

*Mitigating actions to be taken:*

N/A

**Pregnancy and maternity** - Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth

*Potential impact*

Neutral impact – any parents who are pregnant will be able to continue use the nursery at Camberwell under new provider, and there are vacancies for future newborn children at neighbouring nurseries.

No unintended consequences were identified.

*Mitigating actions to be taken:*

N/A

**Race** - Refers to the protected characteristic of Race. It refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins.

*Potential impact*

Neutral impact – the ethnic breakdown of the children who would remain in nurseries if they remained open is as follows:

Ethnicity	Number
White or White British	13
Black or Black British	5
Mixed/Dual Background	3
Asian or Asian British	1
Other	1

While one group (White or white British) make up the largest group of children and parent service users, they will not be substantively differentially affected.

<p><i>Mitigating actions to be taken:</i></p> <p>N/A</p>
<p><b>Religion and belief</b> - Religion has the meaning usually given to it but belief includes religious and philosophical beliefs including lack of belief (e.g. Atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition.</p>
<p><i>Potential impact</i></p> <p>Neutral impact – – there is no evidence that this is a relevant factor in this instance.</p> <p>No unintended consequences were identified.</p>
<p><i>Mitigating actions to be taken:</i></p> <p>N/A</p>
<p><b>Sex</b> - A man or a woman.</p>
<p><i>Potential impact</i></p> <p>Neutral impact – there is nothing to suggest that children or parent service users will be differentially affected by this decision due to their sex.</p> <p>No unintended consequences were identified.</p>
<p>Mitigating actions to be taken: N/A</p>
<p><b>Sexual orientation</b> - Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes</p>
<p><i>Potential impact</i></p> <p>Neutral impact – we do not record information on parents'f sexual orientation, but any LGBT parents would not be differentially affected by this decision.</p> <p>No unintended consequences were identified.</p>
<p>Mitigating actions to be taken: N/A</p>