

Item No.	Classification: Open	Date: 28 September 2023	Decision Maker: Deputy Leader and Cabinet Member for Children, Young People, Education and Refugees
Report title:		Ann Bernadt Nursery School Consultation	
Ward(s) or groups affected:		Peckham	
From:		Strategic Director Children and Adult Services	

RECOMMENDATION

1. That the Deputy Leader and Cabinet Member for Children, Young People, Education and Refugees agree to commence consultation on a proposal to close Ann Bernadt Nursery School by 31 August 2024.

BACKGROUND INFORMATION

2. Ann Bernadt Nursery School is a LA-maintained Nursery School situated on the Willowbrook Estate in Peckham. The school is in a Hard Federation (one joint Governing Body with an Executive Head) with Nell Gwynn Nursery School, situated around 15 minutes' walk from Ann Bernadt. In recent years the number of children attending the nursery school has reduced from 123 (2016/17) to 45 (September 2023).
3. Falling numbers of pupils is a serious issue for schools right across the capital. London Councils (2023) has confirmed that *'London local authorities and schools are currently dealing with a significant and sustained period of reduction in demand for reception places, which has implications for school budgets and standards. The fall in demand reflects the decline in the birth rate since 2012 and changes in migration patterns'*.
4. In Southwark this trend has previously be considered by Cabinet in relation to the Pupil Place Planning Report 2022 (October 2022). In December 2022 Cabinet agreed a Strategy to address this issue: *'Keeping Education Strong: Strategy for future proofing primary schools and protecting the quality of education in Southwark'*.
5. While *'Keeping Education Strong'* focuses on the position with primary schools, the decline in birth rates since 2012 and changes in migration patterns has also had an impact on demand for nursery provision across the borough. Southwark has seen a drop in birth numbers of 33% since 2012 – around 1,650 childbirths, and the Peckham and Nunhead an even larger fall of 35%. This decline is having a severe impact on finances for nursery schools and other school based early years' provision.

6. Funding for all early years providers, including schools is based on the number of children on roll. While rolls are falling, nursery schools have to continue to pay for maintenance of buildings and staffing structures for more places than there are pupils. Maintained nursery schools as small maintained schools are facing significant pressures nationally, locally and individually that severely affect their sustainability.
7. It is a principle of the council to protect Southwark's high quality of education across all age ranges and this may be compromised where the cost of teaching staff, equipment and enrichment activities become unaffordable.
8. Ann Bernadt Nursery school is one of five maintained nursery schools in the borough. Over time the school leadership, led by the governing body, have taken a number of steps to address financial issues in an attempt to become more sustainable. This includes, but is not limited to, federation with Nell Gwynn Nursery school, staffing restructures and a recent partnership with Pilgrims Way and Bellenden Primary Schools that form the River Peck Federation. For the current academic year 2023-2024, following staffing restructures, the school has reduced capacity to 59 places with 45 places currently filled and 18 staff employed (some of whom are employed across the federation with Nell Gwynn e.g. administration staff).
9. The school leadership report that despite taking action to mitigate the risks of falling rolls and increasing costs, Ann Bernadt Nursery School is no longer financially viable and the governing body have notified the Local Authority of their decision to request a consultation on closure of the school in the academic year 2023-2024.
10. In line with the Department for Education's (DFE) guidance: '*Opening and closing maintained schools, Statutory guidance for proposers and decision-makers, January 2023*', and Schedule 2 of the Education and Inspections Act (EIA) 2006 (as amended by the Education Act 2011 and The School Organisation (Establishment and Discontinuance of Schools) Regulations 2013) Southwark Council will be following the statutory process for closing a maintained school. The process is outlined in the guidance, and addressed in detail in paragraphs 13 to 17.
11. In line with the above guidance, Southwark Council must also have regard to the 'Presumption against closure of nursery schools'. This consideration is outlined in page 25 of the guidance, and addressed in detail in a Report at Appendix 2.
12. In the event of the closure of Ann Bernadt Nursery School the building would be repurposed for other education use. A local priority that has been identified is the need for more provision to support children with autism in order to reduce the need for children to travel out of borough for school. There may also be scope to further develop the offer delivered from the adjacent Children's Centre building through the Family Hub programme.

KEY ISSUES FOR CONSIDERATION

13. The statutory process to close a school is set out in the Department for Education’s statutory guidance document ‘*Opening and closing maintained schools’ statutory guidance for proposers and decision-makers’ (2019)*’. The process includes five stages as follows:
- *Stage 1: Statutory Consultation with interested parties*
 - *Stage 2: Publication of proposals*
 - *Stage 3: Representation from publication;*
 - *Stage 4: Cabinet decision, and finally,*
 - *Stage 5: Implementation of proposals, if agreed*

14. The provisional timetable for following this process at Ann Bernadt is set out below – a more detailed timetable is given as Appendix 1.

Stage	Dates
Stage 1: Statutory Consultation	October 2023 to November 2023
Stage 2: Publication	January 2024
Stage 3: Representation	January 2024 to February 2024
Stage 4: Cabinet decision	March 2024
Stage 5: Implementation	31 August 2024

15. There is a statutory presumption against the closure of maintained nursery schools and so the case for closure must be strong. The guidance provides that where a proposal is for the closure of a maintained nursery school, the proposer should set out
- *plans to develop alternative early years provision clearly demonstrating that it will be at least equal in quantity to the provision provided by the nursery school with no loss of expertise and specialism; and*
 - *how replacement provision is more accessible and more convenient for local parents*
16. When proposing to close a school which includes early years’ provision, proposers should set out whether the alternative early years provision will integrate preschool education with childcare services and/or with other services for young children and their families.
17. The Council has provided a detailed response to the matters that must be addressed in the statutory guidance in a report, “Response to presumption against closure of nursery schools” at Appendix 2.

Policy framework implications

18. With regard to the Council's delivery plan, the closure of Ann Bernadt will address the "Work with schools to keep standards high" work stream, as with low pupil numbers, this would be increasingly challenging for the school in the future.
19. The proposed closure also accords with the council's value of "spending money as if it were from our own pocket", as the proposed closure will ultimately mean that schools' expenditure will be deployed where most demand is concentrated.

Community impact statement and Equalities (including socio-economic) impact statement

20. The Public Sector Equality Duty, at Section 149 of the Equality Act 2010, requires public bodies to consider the protected characteristics of individuals when carrying out their day-to-day work, in shaping policy, delivering services and in relation to their own employees.
21. Public bodies should 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 "Equality Framework" explains how the council is putting equality at the heart of everything we do.
22. "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. In this case, the characteristics covering gender reassignment, marriage and civil partnership, pregnancy and maternity, and sexual orientation are unlikely to be issues to consider in terms of place planning. In terms of age, disability, race, religion or belief, any concrete proposals that emanate from the consultations with stakeholders will naturally be equality impact assessed.

Community impact statement

Equalities (including socio-economic) impact statement

23. A detailed Equality Impact Needs Assessment (EINA) (that includes socio-economic impact) has been completed and is attached at Appendix 4. The statutory guidance requires the Cabinet to consider the impact of this proposal on local integration and community cohesion objectives when they are taking a decision on the proposals. Given that most children are remaining within the locality it is not felt that there will be any discernible impact on integration and community cohesion.

24. Ann Bernadt is a nursery school at which most children attend for one year. As such children currently attending the School would move on to Primary School next September whether or not the School remains open Any impact on children currently attending the School would therefore be minimal.

Health impact statement

25. We understand that making changes, such as having to move school or employment, can have an impact on mental health. We have provided school leaders of all of our schools with access to support resources for their staff and have also provided support to our children and families through our education services.

Climate change implications

26. Following the Council Assembly meeting on the 14th July 2021, the Council has now committed to considering the implications of climate change of any decisions made.
27. This report has not directly considered the impact of climate change in the main body of the report, as the recommendation will have a minimal effect on climate change. As the numbers of pupils in the authority area falls, and the numbers of pupils attending schools reduce, then it is likely that less pupils will be travelling to schools, thereby potentially reducing car use, travel and carbon emissions overall.
28. No direct measures have been taken to reduce or enhance the impact on climate change as part of this work, as no substantive negative effects have been identified. Additionally, as no direct measures have been taken to reduce or enhance the impact on climate change as part of this work, no monitoring will be required.
29. Reducing the number of school places will not directly enhance the environment and green space, nor will it create "green" jobs and businesses, or benefit sustainable energy or reduce waste, albeit that less pupils in a particular school could potentially use less energy and produce less waste.
30. Therefore, there is no expected substantive negative climate change effect arising from this proposal.

Resource and risk implications

31. The Council aims to ensure that demand for early years' places is as closely matched to supply as possible. The closure of a school where there is considerable overcapacity supports this process.
32. The level of existing and anticipated vacancies and the compact nature of Southwark's geography mitigate considerably against any risk of there being insufficient places to house pupils affected by the closure. The

nursery school is located in an area where there exists a choice of equivalent, well established and accessible maintained nursery school provision for children and parents to access as well as a choice of other types of provision including teacher led (school) based provisions and Private, Voluntary and Independent (PVI) provision.

33. The freehold of the building belongs to the Council, who would ultimately decide what use the building would be put to, if closure were agreed. Planning constraints presently limit the use of the building for anything other than education or training purposes. Southwark council's intention is for the building to remain in use as an educational or community amenity, with primary consideration being given to use of site in support of the council's SEND strategy.

Legal implications

34. The council's general duty in relation to securing sufficient school places in its area, and its functions in relation to making alterations to its existing maintained schools, is described in the body of the report.
32. There is an additional need in this case for the council to provide a strong case for the closure of Ann Bernadt as there is a statutory presumption against the closure of maintained nursey schools. The report at Appendix 2 addresses this issue.
33. Where the council is considering a proposal to close a maintained school, the Lead Member is reminded that certain proposals will be subject to statutory notification and consultation procedures under Education and Inspections Act 2006, and regulations and guidance issued under that that Act.
34. The Lead Member is also reminded that the public sector equality duty under section 149 Equality Act 2010, as set out in the Community Impact section of the report, applies to the exercise any of its functions. In line with Equality and Human Rights Commission guidance, an equality and health analysis has been undertaken to indicate the extent of any impact on those with protected characteristics.

Human Resource Implications

35. The Council is the employer of all staff at the school, and will follow formal staff redundancy processes in consultation with trade unions and staff as per the Restructure, Redeployment and Redundancy Policy. This may or may not result in staff redundancies

Financial Implications

36. Maintained nursery school (MNS) balances in Southwark have consistently declined since the introduction of the Early Years National Funding Formula (EYNFF) in 2017-18, despite supplementary funding in recognition of higher costs in MNS with 60% of Southwark's MNS now in deficit.

37. Ann Bernadt Nursery School's financial position has significantly deteriorated over the course of 2022-23, increasing from a £100k deficit balance in 2021-22 to over £300k in 2022-23.
38. This position is considerably unstable and arguably unsustainable in the short to medium term without significant changes to the structure of the school, in terms of either staffing, governance arrangements or closure.

Consultation

39. When it is proposed to close a maintained school the statutory consultation procedures defined by the DfE are required to be undertaken.
40. This process is outlined in Appendix 1, it involves a mixture of formal and informal consultation processes that needs to be carried out by the local authority and Governing Body. Initially, this involves ensuring all stakeholder are informed of the proposals and plans to follow a statutory consultation process.
41. Lead Member approval is required to initiate the statutory consultation process which runs for six weeks during term time and will include meetings with parents/carers, staff, trade unions and governors, as well as local MPs, the Southwark Diocesan Board and Education Commission, and neighbouring authorities to elicit their views on the proposed closure.
42. All comments obtained through the statutory consultation process will be considered, the Lead Member will then be asked whether to proceed with the closure proposal. At this stage, formal notices would be issued, and the consultees (as above), as well as the general public would be invited to consider the proposals put forward to close the school.
43. The final decision to close Ann Bernadt Nursery School rests with the council's Cabinet. If this is agreed, Ann Bernadt Nursery School will close on the 31 August 2024.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Assistant Chief Executive - Governance and Assurance

44. This report seeks the agreement of the Cabinet member to commence a statutory consultation under the Education and Inspections Act 2006. The intention in these proposals is to seek to close a school.
45. In this case the proposal is to close Ann Bernadt Nursery School for the reasons set out in the report and to facilitate an orderly transfer of existing pupils from Ann Bernadt to other nurseries.

46. This is one of the options available when seeking to close a school as set out in the DFE statutory guidance "Opening and Closing Maintained Schools". The Cabinet member is empowered to take this executive decision in accordance with part 3D of the constitution.
47. There is an additional need for the council to provide a strong case for the closure of Ann Bernadt as there is a statutory presumption against the closure of maintained nursery schools. The report at Appendix 2 addresses this issue.
48. Where the council is carrying out any consultation, in accordance with the Gunning principles it is important that the material provided to consultees will include sufficient information to enable "intelligent consideration", that the council will give adequate time for those responses, and ensure that the results of the consultation are properly considered and taken into account before deciding whether to proceed to issue statutory notices.
49. The general duty on the council to ensure a sufficiency of school places has been referred to in the body of the report.
50. The Cabinet Member is reminded that the council, in the exercise of all its functions, must have due regard (section 149 Equality Act 2010) to the need to (a) eliminate discrimination, harassment, victimisation or other prohibited conduct, (b) to advance equality of opportunity and (c) foster good relations between persons who share a relevant protected characteristic and those who do not share it. An equality impact analysis has been completed which the cabinet member should take into account when making her decision on this report.

Strategic Director of Finance REF: [CAS23/36]

51. The Strategic Director of Finance notes the proposal to commence consultation on the proposal to close Ann Bernadt Nursery School from 24th July 2024 onwards. Maintained schools receive the majority of their funding via the Dedicated Schools Grant and falling rolls over a period of time can result in significantly reduced grant income, which can impact the ability of a school to balance its budget whilst maintaining teaching and learning standards.
52. In the case of Ann Bernadt Nursery School, the financial strain due to falling rolls is unsustainable in the short to medium term without significant changes to the structure of the school, in terms of either staffing, governance arrangements or closure.
53. Schools in financial difficulty contribute to wider financial stresses across all maintained schools and so it is important that the financial position of all schools are reviewed regularly to ensure they are living within their means.

54. Section 22 of the Schools and Standards Framework Act (SSFA) 1998 sets out the Local Authority's responsibilities with respect to the funding of schools and includes a duty to defray all the expenses of maintaining a school.

55. Whilst the responsibility for the financial management of the school rests with the governing body, the ultimate responsibility for maintained schools rests with the Council and it is incumbent upon officers and members to ensure robust governance and controls are in place, both with respect to falling rolls and financial deficits, to limit any further exposure to financial risk arising from schools in deficit.

Head of Procurement

56. No services are being procured as a result of this report, so there is no requirement for comments from the Head of Procurement.

Other officers

57. There were no other officers were considered for a concurrent.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Opening and closing maintained schools - Statutory guidance for proposers and decision-makers DfE, January 2023	Children and Adult Services, 4 th Floor 160 Tooley Street, London, SE1 2QH	Georgia Pritchard 0207 525 2344
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/851585/Opening_and_closing_maintained_schools1012.pdf		
Education and Inspections Act (EIA) 2006, HMSO, 2006 Education Act 2011, HMSO, 2011	Children and Adult Services, 4 th Floor 160 Tooley Street, London, SE1 2QH	Georgia Pritchard 0207 525 2344
https://www.legislation.gov.uk/ukpga/2006/40/contents https://www.legislation.gov.uk/ukpga/2011/21/contents/enacted		
The School Organisation (Establishment and Discontinuance of Schools) Regulations 2013), HMSO, 2013	Children and Adult Services, 4 th Floor 160 Tooley Street, London, SE1 2QH	Georgia Pritchard 0207 525 2344
https://www.legislation.gov.uk/uksi/2013/3109/contents/made		
Southwark Council Delivery Plan, January 2023	Children and Adult Services, 4 th Floor 160	Georgia Pritchard 0207 525 2344

Background Papers	Held At	Contact
	Tooley Street, London, SE1 2QH	
https://www.southwark.gov.uk/council-and-democracy/fairer-future/fairer-greener-safer-southwark-s-council-delivery-plan		
Southwark Council Values, January 2021	Children and Adult Services, 4 th Floor 160 Tooley Street, London, SE1 2QH	Georgia Pritchard 0207 525 2344
https://www.southwark.gov.uk/council-and-democracy/fairer-future/values		
Public Sector Equality Duty, EHRC, 2014	Children and Adult Services, 4 th Floor 160 Tooley Street, London, SE1 2QH	Georgia Pritchard 0207 525 2344
https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty		

APPENDICES

No.	Title
Appendix 1	Decision Flow Chart - Closure of Ann Bernadt Nursery school
Appendix 2	The presumption against closure of nursery schools - response to guidance
Appendix 3	Map of location of Ann Bernadt Nursery School
Appendix 4	Equality Impact and Needs Assessment

AUDIT TRAIL

Lead Officer	David Quirke-Thornton Strategic Director of Children and Adult Services
Report Author	Georgia Pritchard, Early Years Education Advisor
Version	Final

Dated	21 September 2023	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Assistant Chief Executive – Governance and Assurance	Yes	Yes
Strategic Director of Finance	Yes	Yes
List other officers here	N/A	N/A
Cabinet Member	Yes	No
Date final report sent to Constitutional Team	28 September 2023	

