

<b>Item No.</b> 9.	<b>Classification:</b> Open	<b>Date:</b> 6 March 2024	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Closure of Ann Bernadt Nursery School	
<b>Ward(s) or groups affected:</b>		Peckham	
<b>Cabinet Member:</b>		Councillor Jasmine Ali, Deputy Leader and Cabinet Member for Children, Education and Refugees	

**FOREWORD - COUNCILLOR JASMINE ALI, CABINET MEMBER FOR DEPUTY LEADER AND CABINET MEMBER FOR CHILDREN, EDUCATION AND REFUGEES**

Schools and nursery schools are the heart of our communities in Southwark so it is with great sadness that I ask Cabinet to approve the attached proposal to close Ann Bernadt Nursery School.

Ann Bernadt 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 federation with other schools, staffing restructures and a partnership with the River Peck Federation.

The number of children attending the nursery school has fallen by nearly 50% since 2016. The school leadership report that despite taking action to mitigate the effects of falling rolls, Ann Bernadt is no longer financially viable and governors requested a consultation on the proposed closure of the school in the academic year 2023/2024. This has been actioned by the council, and extensive consultation – as outlined in the attached report has been undertaken. The financial position for Ann Bernadt is not sustainable – it is increasing from a £100k deficit balance in 2021-22 to over £300k in 2022-23.

Throughout the consultation process, no viable alternative suggestions were proposed. An Equalities Impact Needs Analysis was undertaken as part of the process, and no equalities issues requiring mitigation were identified. Governors and the Council feel Ann Bernadt is no longer financially viable.

Pupil falling rolls is a serious issue for primary and more recently for nursery schools right across London. There are a number of reasons for this. A gradual fall in children entering reception was confirmed in 2018 as a trend. Contributing factors include; fall in birth rate, the uncertainty brought about by Brexit causing some families to leave the UK, rising costs of housing and more recently, the global pandemic demonstrating to more families how they can work in London while living further afield.

Following our £200m investment in to Southwark schools, the Council has been working closely with schools and nursery schools to weather this demographic storm.

As lead member for education I have written to two of the many recent education secretaries. The first letter was to the then Education Secretary Nadim Zahawi, on behalf of London Labour authorities to ask for financial support. More recently I wrote to Gillian Keegan Education Secretary - precisely to bring to her attention the crisis in nursery funding, again asking her to support. At the same time I pointed out that her own nursery places expansion scheme would be in jeopardy if she didn't support nurseries through the current funding crisis.

The River Peck Federation has another nursery that will be able to find some places for families from Anne Bernadt that need places. In all schools that have closed or amalgamated children have successfully managed the transition to the new school regardless of need. Most nursery pupils will transfer to a school within a few years months of taking a nursery place at a nursery school. Schools have "open doors" and welcome visits to reassure children and families.

Southwark Schools HR have worked previously with closing schools and will support staff to secure employment elsewhere in the borough wherever possible. They are given practical support and can be put forward for roles if available, and then undergo a normal recruitment process. Staff can also be suggested for secondments within the LA if they arise if they are willing to take this opportunity

I would like to thank Gregory Doey the Head Teacher at River Peck Federation for and Georgia Pritchard Southwark's Early Years Advisor for working tirelessly in making sure that the school staff, pupils and their families are held and supported through this - incredibly sad closure.

In the meantime we will continue to apply a strategic approach to this issue, do all we can to protect existing nursery school provision in Southwark and continue to put pressure on government to support our schools including our nursery school through this crisis.

## **RECOMMENDATION**

### **Recommendation for the Cabinet**

1. That the Cabinet agree to close Ann Bernadt Nursery School from the 31 August 2024 onwards

## BACKGROUND INFORMATION

2. Ann Bernadt Nursery School is a local authority maintained nursery school situated on the Willowbrook Estate in Peckham. The school is in a Hard Federation (a joint Governing Body with an Executive Head) with Nell Gwynn Nursery School, Bellenden Primary School and Pilgrims Way Primary School. In recent years the number of children attending Ann Bernadt has reduced from 123 (2016/17) to 42 (September 2023).
3. Falling numbers of pupils is an 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 January 2024, London Councils published "Managing Falling School Rolls in London, which noted *"Most London boroughs are expected to see a decline in reception pupil numbers from 2023-24 to 2027-28. Over this four year period there is a forecast drop in demand of 4.4% at reception on average across London"*.
5. In Southwark this trend has previously been considered by Cabinet in relation to the Pupil Place Planning Reports in successive years (the latest being in October 2023). 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'*. 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 – a reduction of around 1,650 childbirths; the Peckham and Nunhead locality has seen an even larger fall of 35%. This decline is having a severe impact on finances for providers and in particular on those of school based early years provision
6. Funding for all early years providers, including schools is based on the number of children on roll - whilst rolls are falling, funding therefore decreases. Schools in particular have to continue to pay for maintenance of buildings and staffing structures for more places than there are pupils.
7. As small schools with high overheads, maintained nursery schools are facing significant pressures nationally, locally and individually that severely affect their sustainability. 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 Southwark. 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 has included a federation with Nell Gwynn Nursery School, staffing restructures and a 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 a capacity of 59 children and employs 16 staff (some of whom are employed across the federation with Nell Gwynn e.g. administration staff). The school leadership report that despite taking action to mitigate the risks of falling rolls and increasing costs, Ann Bernadt 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.

9. 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 11 to 14. 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.
10. In the event of the closure of Ann Bernadt Nursery School, the building would be repurposed for other education and/or community use with primary consideration being given to the use of site in support of the Council's SEND strategy.

### **The procedure for the consideration of a school closure**

11. The five stages to a school closure consideration outlined in the guidance and mentioned in paragraph 9 are set out below:
  - *Stage 1: Statutory Consultation with interested parties (completed)*
  - *Stage 2: Publication of proposals (completed)*
  - *Stage 3: Representation from publication; (completed)*
  - *Stage 4: Cabinet decision, and finally, (this paper requests this)*
  - *Stage 5: Implementation of proposals, if agreed*
12. The local authority undertook Stage 1 – Statutory Consultation with interested parties, details of which are provided in paragraphs 15 to 20 from the 18 October 2023 to the 6 December 2023. The Cabinet Member for Children, Education and Refugees was then required to consider this feedback before approval of publication, and then agreed to publish formal closure proposals in early January 2024 (Stage 2).
13. Stage 3 involved the receipt of formal representations from interested

parties and stakeholders for a 4-week period from 9<sup>th</sup> January 2024 to the 6<sup>th</sup> February 2024. Feedback from this and previous consultation should be considered by Cabinet when the decision to close is determined (Stage 4). Should the Cabinet agree to the closure of the school (Stage 5 of the process) the formal closure of the school would take place on the 31 August 2024.

14. The timetable outlined above is given in tabular format below

<b>Stage</b>	<b>Dates</b>
Stage 1: Statutory Consultation with interested parties	18 October 2023 to 6 <sup>th</sup> December 2023
Stage 2: Publication	19 December 2023
Stage 3: Representation	9 January 2024 to 6 <sup>th</sup> February 2024
Stage 4: Cabinet decision	6 March 2024
Stage 5: Implementation	31 August 2024

### **Responses to the pre-publication consultation (Stage 1)**

15. It is a statutory requirement for the Proposer (in this case the local authority) to consult any parties they think appropriate before publishing statutory proposals. The process included a statutory element of consultation that lasted for 6 weeks to allow the widest possible opportunity for views/comments to be made by parents, carers, local residents and other stakeholders. Two parent meetings and one staff meeting took place on the 15<sup>th</sup> November 2023. Trade unions were present at the staff meeting.
16. The purpose of the consultation was for the local authority to seek the views of and engage with those that could potentially be affected by the proposed closure of Ann Bernadt Nursery School. It was also an opportunity for interested parties to suggest other options for consideration on the proposed closure of Ann Bernadt in August 2023. In addition to this, Southwark sought the views of:
- *All schools/admission authorities in Southwark, governing bodies and academy trusts (via the Headteacher and the Chair of Governors).*
  - *Neighbouring Councils (Lambeth and Lewisham)*
  - *Southwark local ward Councillors and the local MP*
  - *The Southwark Diocesan Board of Education and the Catholic Diocese*
  - *Appropriate Trade Unions*
17. Consultation has been undertaken by:
- *Placing a note on the school website containing the consultation documents*
  - *Providing an online form to allow parents, carers and stakeholders to feed back on the pre-publication proposals*

- *Providing an email address to allow for parents, carers and stakeholders to feed back on the pre-publication proposals (questions.education@southwark.gov.uk)*
  - *An email to all of the five, additional stakeholder groups listed above was sent by the LA*
  - *Consultation meetings for parents, carers, community and stakeholders were held in November 2023,.*
  - *Consultation with staff, and their professional associations/trade unions is ongoing and presently being undertaken*
18. The results of the initial stage 1 pre-publication consultation are outlined below.
19. There were 91 responses (89 online) – with 78 respondents saying they did not agree to the closure (86%). Of respondents who provided information about their characteristics:
- a. 16% were staff employed at the school, 19% were staff employed at other schools, and 25% were parents.
  - b. 46% identified themselves as White British, 54% from Global Ethnic Majority (GEM) communities
  - c. 13% reported a disability;
  - d. 20% of the respondents were men.
20. An objection to the closure was received from UNISON, representing the non-teaching staff at the school. Staff and the trade unions had numerous operational queries, and liaised extensively with the school's Human Resources (HR) advisors. No other trade unions formally objected to the school's closure. At the conclusion of the statutory consultation outlined above, the local authority has reviewed the feedback. No viable alternative proposals have been put forward and therefore the recommendation is to proceed to the next stage of the process.
21. The issues raised and alternative proposals from this consultation are outlined below:

<b>Issues Raised</b>	<b>LA Response</b>
Excellent work with children and parents	This is not in question – the problem is the viability of the school – not enough children are attending
Promotion of the nursery needs to be improved	Further work to promote the Nursery School would be unlikely to significantly reverse the trend in falling numbers sufficiently to improve its viability.
Difficulties in finding alternative early years places (for parents and carers)	A substantial amount of alternative provision exists with the locality, including two Nursery Schools with vacancies and two primary schools

<b>Issues Raised</b>	<b>LA Response</b>
	with nursery classes.
Difficulties in finding alternative employment for staff	Vacancies exist across the Early Years sector
Facilities at the school not available elsewhere	There are similar facilities available at other schools in the immediate vicinity
<b>Alternatives proposed</b>	
Nell Gwynn Nursery School to close rather than Ann Bernadt.	This would not address the viability of Ann Bernadt Nursery School.
Conversion to residential accommodation	There are other tenants of the building that would render this suggestion unviable
Merger with the Grove Nursery	Grove is already in a federation with Kintore Way and is stable in this arrangement. Ann Bernadt is already in a federation.
Opening a SEND resource base on the site	A considerable number of responses proposed this. This will be considered as one of the options for future use of building.
Open the school to under 2s	There is already considerable provision in the private and voluntary sector for this, and it would be unlikely to be financially viable for the Nursery School to deliver this
Reduce the operating hours of the nursery	This would render the school even less viable than it already is – as early years settings are funded according to the number of hours of education they provide

### **Publication of the notices and representation (Stages 2 and 3) and responses to issues raised in the post publication consultation**

22. The local authority proceeded to the next stages of the process (**Stage 2**) with the publication of the proposals, requesting responses from 9<sup>th</sup> January 2024 to 6<sup>th</sup> February 2024. Formal notices (Appendix 4) were published and displayed at the school, placed on the school website and in the local press (the Southwark News) inviting comment on the Statutory proposal. (Appendix 5). All the stakeholders written to at Stage 1 were written to again in January 2024, outlining that the Cabinet Member had agreed formal publication of the closure proposals, and requesting their observations and representations
23. This action completed Stages 2 and 3 of the statutory process.

### **Responses to the Post-Publication Consultation**

24. The results of the Stage 3 publication consultation were as follows. A

total of 4 responses were received, all of which opposed the closure. With such a small turnout, an analysis of the characteristics of the respondees would not be meaningful. The responses were not substantially different to those made in the first phase of consultation, including a suggestion that the school be transformed into a specialist facility for children with special health and learning needs.

25. No substantive, formal representations have been received from neighbouring councils, ward councillors, the SDBE or the Catholic Diocese.

#### **Cabinet decision (Stage 4)**

26. In line with the statutory guidance, the decision maker is then the Cabinet of the Council and the proposals and such observations, feedback, objections and comments are herewith presented to the Cabinet for scrutiny and decision. The Cabinet is empowered to:

- a. Agree the closure proposal*
- b. Agree the closure proposal with modifications*
- c. Refuse the closure proposal*

27. If Cabinet does not take a decision on the school closure within 2 months of the expiry of the formal notice (i.e. by 8<sup>th</sup> April 2024), the matter would then be referred to the Office of the Schools Adjudicator (OSA) for final decision.

28. The following bodies have the right to have the decision referred to the Schools Adjudicator in any case, independent of the local authority after the Cabinet decision is taken.

- a. The Diocesan Board of Education of any C of E Diocese in the relevant area.*
- b. The Bishop of any Roman Catholic Church in the relevant area.*
- c. The governing body of any foundation of the foundation or voluntary aided school specified in the proposals.*

29. As Ann Bernadt Nursery School is neither a foundation nor voluntary aided school, the right of appeal by the federated governing body does not apply in this case.

#### **Formal closure of the school (Stage 5)**

30. If Cabinet agrees to the proposals to close, this will be effective from 31st August 2024.

#### **Actions undertaken for the pupils, parents and carers affected**

31. The local authority, as the body responsible for school admissions in Southwark, has had to plan for every eventuality to ensure that all



children attending Ann Bernadt Nursery School have a school or early years place for September 2024.

32. The majority of children at Ann Bernadt will be leaving the school in any event to start Primary School Reception Year in September 2024. Support will be offered to parents, carers and pupils to manage the transition to other early years' provision for those who would otherwise be remaining at Ann Bernadt. As with previous school closures, individualised support will be provided to children with special educational needs and/or transport needs.
33. In the local area, Ann Bernadt Nursery School is located within walking distance of two other maintained nursery schools - Nell Gwynn Nursery School, (approximate distance and walking time 0.9 miles and 18 minutes), which is the federation partner of Ann Bernadt, and Grove Nursery School (approximate distance and walking time 0.3 miles and 6 minutes). Both schools have vacancies and sufficient space to absorb pupils displaced by the closure of Ann Bernadt. Parents also have a choice of school based early years provision available catering for 3 and 4 year olds. The provision is teacher led in line with nursery schools so an equivalent quality can be assured with no loss of expertise or specialism.
34. Ann Bernadt is located in walking distance of two maintained primary schools that have teacher led nursery provision for 3 and 4 year olds. Both Oliver Goldsmith Primary School and Brunswick Park Primary School have an equivalent Ofsted rating ("Good") as Ann Bernadt.

### **Actions undertaken for the teachers and non-teaching staff affected**

35. The situation at the start of the process was that the local authority informed their staff at the earliest possible opportunity that there was a potential that the school would close in August 2024. The trade unions were also involved at this stage.

### **Policy framework implications**

36. 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.
37. 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**

38. 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.
39. 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.
40. The council's "Equality Framework" explains how the council is putting equality at the heart of everything we do.
41. "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.

## **Equalities (including socio-economic) impact statement**

42. 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.
43. 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.
44. The majority of children attending Ann Bernadt Nursery School will move on to Primary School Reception Year in September 2024 whether or not the school remains open. Any impact of a school closure would affect the smaller number of children who would continue to need nursery provision, for which many alternative options are available locally.

## **Health impact statement**

45. 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**

46. 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. 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. 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.
47. 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. Therefore, there is no expected substantive negative climate change effect arising from this proposal.

### **Resource implications**

48. 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. 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.
49. 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. 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.
50. 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.

## Risk implications

51. There is a risk that if Cabinet does not take a decision on the school closure within 2 months of the expiry of the formal notice (i.e. by April 2024), the matter would then be referred to the Office of the Schools Adjudicator (OSA) for final decision, and that this decision may be to keep the school open. To remedy this, if it was expected that a decision would need to be made later in the year (i.e. for June or July 2024 Cabinet), publication could be postponed until March 2024 or June 2024.

## Legal implications

52. The council's general duty under the Education Act 1996 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.
53. The council also has a statutory duty under section 1 of the Childcare Act 2006, which specifically requires local authorities to improve the outcomes for all young children, reduce inequalities, and to ensure that there is sufficient high quality integrated early year's provision and childcare for parents locally. Section 6 of the Act further places a duty on local authorities to secure – in partnership with the private, voluntary and independent sector – sufficient childcare for all parents who choose to work or are in training in preparation for work. Section 7 (as substituted by section 1 of the Education Act 2011), places a duty on English local authorities to secure early years provision free of charge.
54. Early Education and Childcare, April 2023 statutory guidance goes on to provide at A2.17 that local authorities “*Ensure that the early years expertise and experience of their maintained nursery schools, if they have them, are used to benefit the whole local area. Maintained nursery schools (MNS) are almost exclusively good or outstanding, the majority are located in disadvantaged areas and. Local authorities should ensure that they have a role in the pedagogical leadership for the local early years system. What this means in practice will depend on local need, but it might include for example: commissioning nursery schools to develop and deliver a quality improvement strategy for the area; having nursery schools work with other providers to share their experience and expertise to raise the overall quality of provision across the area; helping nursery schools to work in partnership with other providers to offer parents who choose a MNS the 30 hours entitlement.*”.
55. 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 nursery schools.
56. Statutory 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".* The report at Appendix 2 addresses this issue.
57. Where the council is considering a proposal to close a maintained school, the Cabinet 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.
58. The Cabinet 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.

### **Financial Implications**

59. 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.
60. 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 at the end of 2022-23.
61. 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.

### **Human Resource Implications**

62. 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

### **Consultation**

63. When it is proposed to close a maintained school, the statutory consultation procedures defined by the DfE are required to be undertaken.

64. This process is outlined in Appendix 6; it involves a mixture of formal and informal consultation processes that needs to be carried out by the local authority. Initially, this involves ensuring all stakeholder are informed of the proposals and plans to follow a statutory consultation process.
65. Cabinet Member approval was required to initiate the statutory consultation process, which ran for six weeks during term time and included meetings with parents/carers, staff, trade unions and governors, as well as alerting local MPs, the Southwark Diocesan Board and Education Commission, and neighbouring authorities to elicit their views on the proposed closure.
66. All comments obtained through the statutory consultation process have been considered and the comments have been summarised in paragraphs 20 and 23.
67. The final decision to close Ann Bernadt Nursery School rests with Cabinet. If this is agreed, Ann Bernadt Nursery School will close on the 31 August 2024.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Head of Procurement**

68. A concurrent from the Head of Procurement was not required.

### **Assistant Chief Executive of Governance and Assurance REF: [JH ON 09.02.24]**

69. The Cabinet will be asked to approve proposals to close Ann Bernadt Nursery School, which is a community school maintained by the council. A school closure is an executive decision of the council, which has been reserved in the council's constitution to be made by the Cabinet.
70. A decision to close the school therefore has to be made by the Cabinet and in accordance with sections 15 and 16 and schedule 2 of the Education and Inspections Act 2006, and the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2013.
71. The 2006 Act prescribes that one of the following decisions has to be made in relation to the proposals:
  - (a) reject the proposals*
  - (b) approve the proposals without modification*
  - (c) approve the proposals with such modifications as the Cabinet thinks desirable after any relevant consultation*

72. When making the decision, Cabinet must also have regard to the statutory guidance "*Opening and closing maintained schools*" issued by the Department for Education in January 2023 when making a decision to close a maintained school.
73. The Cabinet will be asked to make this decision following the publication of proposals by the local authority for the closure of the school. These proposals have been set out in a statutory notice and follow a period of statutory consultation required to take place prior to the proposals being published.
74. This consultation has to have been with anyone who appeared to the local authority to be appropriate.
75. Recommended consultees are set out in the statutory guidance. Details of this consultation are set out in the report, together with the results. The Cabinet should conscientiously take account of the outcomes of the consultation in taking this decision.
76. Any objections or comments will need to be provided to the Cabinet and conscientiously taken into account when making its decision. The Cabinet decision in relation to these proposals has to be made within two months of the close of the representation period of the publication of the statutory proposals, or the decision has to be referred to the Schools Adjudicator to make. If the decision is made to approve the proposals to close the school, the 2006 Act requires these to be implemented by the council.
77. The statutory guidance referred to above sets out considerations that should be made by the council when deciding on proposals including:
  - *The information in the proposals set out in Appendix 5*
  - *Being satisfied that the Council has carried out the statutory process satisfactorily*
  - *Giving due regard to all responses received during the representation period*
  - *Being satisfied there are sufficient surplus places elsewhere in the local area to accommodate displaced pupils and the likely supply and future demand for places in the medium and long term*
  - *The overall quality of alternative places in the area balanced with the need to reduce excessive capacity*
  - *The local context in which the proposals are being made, taking account the nature of the area, the age of the children involved and any alternative options for reducing excess surplus capacity*
  - *The impact of any proposal on local integration and community cohesion objectives*
  - *Will the decision unreasonably extend journey times or increase travel costs or result in too many children being prevented from being able to travel sustainably*
  - *The effect on the balance of denominational provision in the area*

*including the pupils currently on roll and the medium and long term need for places*

- *Is the school a focal point for family and community activity providing extended services for a range of users? If so provision should be made for the pupils and their families to access similar services through their new schools or other means*

78. The Cabinet needs to apply the public sector equality duty in section 149 Equality Act 2010 in making this decision, which requires it to have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;*
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

79. The relevant protected characteristics are referred to in the community impact paragraphs above. An equalities impact analysis has been produced and needs to be considered by the Cabinet in making this decision.

80. Cabinet also needs to have regard to the council's statutory duty under section 14 of the Education Act 1996 to secure that sufficient schools for providing primary and secondary education are available for their area.

81. The schools available for an area shall not be regarded as sufficient for these purposes unless they are sufficient in number, character and equipment to provide for all pupils the opportunity of appropriate education.

82. "Appropriate education" means education which offers such variety of instruction and training as may be desirable in view of

- (a) the pupils' different ages, abilities and aptitudes, and*
- (b) the different periods for which they may be expected to remain at school, including practical instruction and training appropriate to their different needs.*

#### **Strategic Director of Finance REF: [CAS23/39]**

83. The Strategic Director of Finance and Governance notes the proposal to close Ann Bernadt Nursery School. Maintained schools receive the majority of their funding via the Dedicated Schools Grant, which is broadly distributed on a per-pupil basis.

84. As a result, 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.



85. Schools in financial difficulty contribute to wider financial stresses within the maintained schools estate and so it is important that the financial position of all schools are reviewed regularly to ensure they are living within their means.
86. 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.
87. When a maintained school closes, any outstanding deficit falls to the council to be written off. Whilst the financial management of maintained schools is delegated to their governing bodies, ultimate responsibility lies with the local authority 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.

#### Other officers

6. There were none.

#### BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Opening and closing maintained schools - Statutory guidance for proposers and decision-makers DfE, January 2023	Children and Families Directorate, 4 <sup>th</sup> Floor, Children and Adult Services, 160 Tooley Street, London, SE1 2QH	Georgia Pritchard 02075252344
<a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/851585/Opening_and_closing_maintained_schools1012.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/851585/Opening_and_closing_maintained_schools1012.pdf</a>		
Education and Inspections Act (EIA) 2006, HMSO, 2006 Education Act 2011, HMSO, 2011	Children and Families Directorate, 4 <sup>th</sup> Floor, Children and Adult Services, 160 Tooley Street, London, SE1 2QH	Georgia Pritchard 02075252344
<a href="https://www.legislation.gov.uk/ukpga/2006/40/contents">https://www.legislation.gov.uk/ukpga/2006/40/contents</a> <a href="https://www.legislation.gov.uk/ukpga/2011/21/contents/enacted">https://www.legislation.gov.uk/ukpga/2011/21/contents/enacted</a>		

Background Papers	Held At	Contact
The School Organisation (Establishment and Discontinuance of Schools) Regulations 2013), HMSO, 2013	Children and Families Directorate, 4 <sup>th</sup> Floor, Children and Adult Services, 160 Tooley Street, London, SE1 2QH	Georgia Pritchard 02075252344
<a href="https://www.legislation.gov.uk/uksi/2013/3109/contents/made">https://www.legislation.gov.uk/uksi/2013/3109/contents/made</a>		
Southwark Council Delivery Plan, January 2023	Children and Families Directorate, 4 <sup>th</sup> Floor, Children and Adult Services, 160 Tooley Street, London, SE1 2QH	Georgia Pritchard 02075252344
<a href="https://www.southwark.gov.uk/council-and-democracy/fairer-future/fairer-greener-safer-southwark-s-council-delivery-plan">https://www.southwark.gov.uk/council-and-democracy/fairer-future/fairer-greener-safer-southwark-s-council-delivery-plan</a>		
Southwark Council Values, January 2021	Children and Families Directorate, 4 <sup>th</sup> Floor, Children and Adult Services, 160 Tooley Street, London, SE1 2QH	Georgia Pritchard 02075252344
<a href="https://www.southwark.gov.uk/council-and-democracy/fairer-future/values">https://www.southwark.gov.uk/council-and-democracy/fairer-future/values</a>		
Public Sector Equality Duty, EHRC, 2014	Children and Families Directorate, 4 <sup>th</sup> Floor, Children and Adult Services, 160 Tooley Street, London, SE1 2QH	Georgia Pritchard 02075252344
<a href="https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty">https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty</a>		

## APPENDICES

No.	Title
Appendix 1	Map of location of Ann Bernadt Nursery School
Appendix 2	Response to presumption against closure of nursery schools - response to guidance
Appendix 3	Statutory Notice for Closure
Appendix 4	Statutory Proposal to close Ann Bernadt Nursery School
Appendix 5	Equality Impact and Needs Assessment
Appendix 6	Decision Flow Chart - Closure of Ann Bernadt Nursery School

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Jasmine Ali, Deputy Leader and Cabinet Member for Children, Education and Refugees	
<b>Lead Officer</b>	David Quirke-Thornton, Strategic Director of Children and Adult Services	
<b>Report Author</b>	Georgia Pritchard, Early Years Education Advisor	
<b>Version</b>	Final	
<b>Dated</b>	27 February 2024	
<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>
Assistant Chief Executive – Governance and Assurance	Yes	Yes
Strategic Director of Finance	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team</b>		27 February 2024