

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

21 JULY 2008

REPORT OF CORPORATE MANAGEMENT TEAM

KEY DECISION

Children and Young People – Lead Cabinet Member – Councillor A Cunningham

REORGANISATION OF EDUCATION FOR CHILDREN WITH BEHAVIOUR, EMOTIONAL AND SOCIAL DIFFICULTIES (BESD)

1. Summary

Following consultation with interested parties, Cabinet agreed the publication of a Statutory Notice proposing that King Edwin School be closed on 31st August 2008 and the remaining students be transferred to the roll of Westlands School from 1st September. The notice was published on 3rd May. No statutory objections were received in the six-week period following publication. Under the Education and Inspections Act 2006 it now falls to Cabinet to determine the proposal.

The rationale for the proposal agreed by Members in April is that concentrating provision for all students with BESD on a single site will give all of them access to a greater number of specialist staff offering a wider range of curriculum options. Individual learning programmes will be developed to enable each student to reach his or her full potential. Students and staff will benefit from the growing strength of the Stockton Borough First Federation.

Before reaching a decision on this proposal, Members are required to have regard to statutory guidance issued by the Secretary of State for Children, Schools and Families. The body of this report includes comment on the elements of the guidance that are relevant to this proposal. The full guidance is available in the Members' Library.

Before the Education and Inspections Act came into force in 2007, all decisions on school organisation proposals after the publication of a Statutory Notice were delegated to the Corporate Director CESC in consultation with the Cabinet Member for Children and Young People (Executive Function 365). The present proposal falls to Cabinet because no decision to delegate this function under the new law has been made. Cabinet is asked to recommend to Council an amendment to the Constitution to restore delegation of these decisions to the Corporate Director in consultation with the Cabinet Member.

2. Recommendations

Members are asked to agree:

1. that King Edwin School should be discontinued on 31 August 2008 and the remaining students transferred to the roll of Westlands School;
2. to recommend that Council amend the Constitution by deleting Executive Function 365 (a) and 365 (b) and inserting the following:
 - a. "To publish, consider, approve and implement any proposals under Sections 7, 15 or 19 of the Education and Inspections Act 2006 for the establishment, alteration and discontinuance of school premises, save and except where paragraphs 10, 11, 12, 13, 14 or 15 of Schedule 2 of the Act apply and, as a result, any proposals are required to be referred to the adjudicator.
 - a. Either to withdraw, or to refer to the adjudicator any proposals referred to in (a), where any of the said paragraphs 11 to 15 inclusively apply." It is recommended that both these functions (a) and (b) be delegated to the Corporate Director in consultation with the Cabinet Member for Children and Young People.

3. Reasons for the Recommendations/Decision(s)

1. Section 315 of the Education Act 1996 requires that local authorities with responsibility for education keep under review their arrangements for special education provision. A review of provision for pupils with complex and additional needs carried out in 2006/07 concluded that provision for specific types of need should be located on a single site where possible. The present proposal would concentrate provision for students with Behaviour, Emotional and Social Difficulty (BESD) at Westlands School. This would enable all students to benefit from the expertise of specialist staff offering a greater breadth of curriculum options.
2. The Education and Inspections Act 2006 abolished School Organisation Committees and transferred to local authorities their powers to determine school organisation proposals. These decisions are Executive functions that may be delegated in accordance with the local scheme of delegation. The Council's Constitution provides for Executive decisions on proposals published under the previous legislation to be delegated to the Corporate Director in consultation with the Cabinet Member. An amendment to the Constitution would be required to allow the same level of delegation of powers conferred by the Education and Inspections Act 2006.

4. Members' Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so

significant that it is likely to prejudice the Member's judgement of the public interest **(paragraphs 10 and 11 of the code of conduct)**.

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;
- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter **(paragraph 12 of the Code)**.

Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.

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**REPORT OF CORPORATE
MANAGEMENT TEAM**

KEY DECISION

**REORGANISATION OF EDUCATION FOR CHILDREN WITH BEHAVIOUR, EMOTIONAL
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SUMMARY

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The rationale for the proposal agreed by Members in April is that concentrating provision for all students with BESD on a single site will give all of them access to a greater number of specialist staff offering a wider range of curriculum options. Individual learning programmes will be developed to enable each student to reach his or her full potential. Students and staff will benefit from the growing strength of the Stockton Borough First Federation.

Before reaching a decision on this proposal, Members are required to have regard to statutory guidance issued by the Secretary of State for Children, Schools and Families. The body of this report includes comment on the elements of the guidance that are relevant to this proposal. The full guidance is available in the Members' Library.

Before the Education and Inspections Act came into force in 2007, all decisions on school organisation proposals after the publication of a Statutory Notice were delegated to the Corporate Director CESC in consultation with the Cabinet Member for Children and Young People (Executive Function 365). The present proposal falls to Cabinet because no decision to delegate this function under the new law has been made. Cabinet is asked to recommend to Council an amendment to the Constitution to restore delegation of these decisions to the Corporate Director in consultation with the Cabinet Member.

RECOMMENDATIONS

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1. that King Edwin School should be discontinued on 31 August 2008 and the remaining students transferred to the roll of Westlands School;
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establishment, alteration and discontinuance of school premises, save and except where paragraphs 10, 11, 12, 13, 14 or 15 of Schedule 2 of the Act apply and, as a result, any proposals are required to be referred to the adjudicator.

- b. Either to withdraw, or to refer to the adjudicator any proposals referred to in (a), where any of the said paragraphs 11 to 15 inclusively apply.” It is recommended that both these functions (a) and (b) be delegated to the Corporate Director in consultation with the Cabinet Member for Children and Young People.

DETAIL

Transfer of decision making powers to local authorities

1. The Education and Inspections Act 2006 abolished School Organisation Committees (SOC), the independent local bodies responsible for determining school organisation proposals where statutory objections had been received. Decisions on proposals where no objections were received were not referred to the SOC but were normally delegated to the Corporate Director for Children, Education and Social Care in consultation with the Cabinet Member for Children and Young People. Under Section 15 of the Act the local authority is now the decision maker for all proposals to close a maintained school. This is an Executive decision to be made by Cabinet. At present no arrangement has been made to delegate this decision.

Guidance for decision makers

2. Before reaching a decision, Members are required to have regard to guidance published by the Department for Children, Schools and Families. The full guidance document is available in the Members' Library. It includes an overview of the procedure and detailed guidance on each of the five stages: consultation, publication, representations, decision and implementation. The following paragraphs summarise the relevant parts of the guidance on each stage, and comment on the issues for decision by Cabinet.

Stage 1: Consultation (guidance paragraphs 1.2 to 1.6)

3. Consultation has been carried out in accordance with the guidance. A consultation paper (attached as **Appendix 1**) was sent by post to the home address of every student on roll at King Edwin or Westlands schools, and also to:
 - (a) members of staff at the schools
 - (b) unions and professional associations representing staff at the schools
 - (c) the Governing Body of Stockton Borough First Federation (Westlands School)
 - (d) the Interim Executive Board for King Edwin School
 - (e) other local authorities with students on roll at either of the schools
 - (f) the Members of Parliament for Stockton North and Stockton South.
4. A meeting was held for staff at King Edwin School and their professional representatives on 10 March. Later that day a meeting was held for parents and carers of students on roll at King Edwin School. The views expressed at these meetings and in written responses were reported to Cabinet on 24 April when the decision was taken to publish a Statutory Notice.

Stage 2: Publication (guidance paragraphs 2.1 to 2.10)

5. Following consideration of the responses to consultation, Cabinet agreed the publication of a Statutory Notice. A valid Notice was created using a template on the DCSF website, ensuring that all the information specified in regulations was included. The Notice was published in the Herald & Post on 3 May, on the Council website from the same date, and copies were displayed at the entrances to King Edwin and Westlands schools. Copies were sent by post or email to the recipients recommended in the guidance.
6. The Statutory Notice is a summary of the full proposal. The complete proposal was drafted, again using a DCSF template, and copies were sent to:
 - (a) the Governing Body of Stockton Borough First Federation (Westlands School)
 - (b) the Interim Executive Board for King Edwin School
 - (c) other local authorities with students on roll at either of the schools
 - (d) the Anglican and Roman Catholic dioceses.
7. The Statutory Notice pointed out that copies of the complete proposal were available to any person on request. No requests were received.

Stage 3: Representations (guidance paragraphs 3.1 to 3.2)

8. A period of six weeks must be allowed in which any person may make representations in writing for or against the proposal. Copies of all representations must be forwarded to the decision maker so that their views may be taken into account. The period for representations expired on 14 June. No representations were received by that date.

Stage 4: Decision (guidance paragraphs 4.1 to 4.69)

9. Members may decide to:
 - reject the proposal;
 - approve the proposal;
 - approve the proposal with a modification (e.g. the school closure date); or
 - approve the proposal subject to a specific condition (not relevant in this case).
10. Paragraphs 4.16 to 4.62 of the guidance set out the factors that must be taken into account by the decision maker. Not all of those are relevant to this proposal. The principal factors are:
 - (a) The impact on standards of attainment. This proposal will support higher standards by bringing together onto a single site specialist staff and resources for students with BESD. Students at Westlands School (part of Stockton Borough First Federation) already have access to enhanced curriculum opportunities through the shared resources of the federation.
 - (b) The contribution to the ECM objectives. King Edwin School currently offers no extended services. Students at Westlands School have access to the full extended schools core offer.
 - (c) School capacity and surplus places. Falling secondary rolls across the borough will mean a diminishing need for BESD places. Concentrating these places on one site will improve the efficient use of resources and release a

school site for alternative use. A new-build Westlands School is planned within the first wave of the local BSF programme.

- (d) Impact on the community and travel. Travel arrangements for students will remain unchanged so that BESD provision will remain accessible for all students resident in the borough. King Edwin School does not serve any specific geographical community.
- (e) Any equal opportunity issues. An Equalities Impact Assessment has been carried out. No adverse impact on any group was identified.
- (f) Boarding provision. Residential provision is available at Westlands on the same basis as at King Edwin. The proposed BSF new build Westlands will include a new residential unit.
- (g) 14-19 curriculum. All maintained secondary schools in the borough are members of the 14-19 partnership with the FE colleges. The partnership has an agreed strategy in place to develop the 14-19 curriculum, including specialist diplomas, in a way that offers access to all students in the borough.
- (h) Provision for students with special educational needs. Examples of the positive impact of this proposal include:
 - i. a clear and consistent focus on the learning needs of all young people with BESD in a single school. The pool of expertise and knowledge of best practice available under the First Federation will ensure an appropriate match to individual needs. Shared working aligned to one federation, facilitated as appropriate by the local authority specialist and school improvement services, has already resulted in greater alignment of specialist staff to meet the needs of these vulnerable young people.
 - ii. A single BESD school will allow a broader curriculum to be offered, with more flexibility for personalised learning and improved motivation. Specific examples include art (Westlands has the Silver Artsmark) and modern foreign languages (currently unavailable at King Edwin).
 - iii. Westlands is federated with Abbey Hill, a high performing Technology College which has gained a second specialism in applied learning. Applied and vocational learning opportunities underpinned by 21st century technology are known to engage young people through a curriculum which they can see has relevance beyond school and into the world of work. Influenced by the close relationship with Abbey Hill, Westlands has a functional horticultural enterprise as well as developing access to small animal husbandry through keeping chickens and bees.
 - iv. With the developing 14-19 agenda, there are clear economies of scale to be gained if there is one school rather than two accessing external support and working closely with the Inclusion Service to broker alternative learning opportunities, particularly at Key Stage 4. The consistent processes that can be put in place by one school when commissioning courses at Key Stage 4 will result in tailored packages for the young people which allow fair access to 14-19 opportunities across the borough.
 - v. Staff will benefit from the greater breadth of curriculum opportunities and shared professional development activities across the federation.

- vi. For all our young people, but particularly the most vulnerable, the Every Child Matters agenda is key. As well as keeping an appropriate focus on Enjoying and Achieving, Westlands has the silver Healthy Schools Award and offers extended services such as the successful mothers and toddlers group.
- (i) The views of interested parties. The views received during the initial consultation period were considered by Cabinet in April and were considered before the decision was taken to publish a Statutory Notice. No further representations have been received.

Stage 5: Implementation (guidance paragraphs 5.1 to 5.8)

- 11. When a proposal is approved, the proposer becomes under a statutory duty to implement it. A proposal may be modified after approval and before implementation but if proposers wish to make a significant change they must publish a new proposal to revoke the original and create a fresh proposal.

Delegation of Cabinet function to determine statutory proposals

- 12. The Council's Constitution and Scheme of Delegation at present include Executive Functions 365(a) and 365(b). These refer specifically to statutory proposals published under the School Standards and Framework Act 1998 (SSFA 1998) to open, close or significantly alter a maintained school. Function 365(a) delegates to the Corporate Director CESC in consultation with the Cabinet Member for Children and Young People power to determine proposals where no objections have been received. Where objections are received, function 365(b) delegates power to withdraw a proposal or to refer it for decision by the School Organisation Committee. The Education and Inspections Act 2006 abolished School Organisation Committees and transferred their powers of decision to local authorities. The 2006 Act also replaced parts of SSFA 1998, so that proposals for changes to school organisation must now be published under the 2006 Act and not under SSFA 1998. The specific provisions of Executive Function 365(a) and 365(b) are therefore now out of date.
- 13. The Director of Law and Democracy has advised that the new decision making power is an Executive function that could be delegated, but it cannot be delegated under the present Function 365(a). It therefore falls to Cabinet to determine this proposal. Cabinet has been asked to consider this proposal on three separate occasions: to authorise initial consultation, to agree publication of a Statutory Notice, and now to determine whether to implement the proposal. Members may consider this an inefficient process.
- 14. It is suggested that Cabinet might in future consider every school organisation proposal once only at the point when publishing a Statutory Notice is under consideration. The recent practice of seeking authority from Cabinet to initiate consultation is not required by the Constitution. It has been done largely as a means of ensuring that Members are aware that consultation is to take place. Some potential consultees object to hearing about a forthcoming consultation through the media, which happens when Cabinet papers are published ahead of the meeting. Officers have attempted to mitigate this by informing some consultees before the Cabinet papers are published, but this seems only to add further unnecessary bureaucracy to the process. Planned consultations are in any event included in the Consultation Plan available to Members and published on the Council website. A decision to publish a Statutory Notice is a rather more significant matter. It requires consideration of the responses to consultation, and seems an entirely appropriate

stage in the process for Cabinet involvement. Cabinet has delegated the final decision under Function 365 for some years, and there seems no pressing reason not to restore this delegation. Members may wish to note that the requirement to have regard to statutory guidance applies to all decision makers, whether Cabinet or one or more individuals with delegated powers.

15. The Director of Law and Democracy has suggested that the Constitution and Scheme of Delegation be amended with the following wording: "(a) To publish, consider, approve and implement any proposals under Sections 7, 15 or 19 of the Education and Inspections Act 2006 for the establishment, alteration and discontinuance of school premises, save and except where paragraphs 10, 11, 12, 13, 14 or 15 of Schedule 2 of the Act apply and, as a result, any proposals are required to be referred to the adjudicator. (b) Either to withdraw, or to refer to the adjudicator any proposals referred to in (a), where any of the said paragraphs 11 to 15 inclusively apply."
16. For the information of Members, the sections of the legislation referred to in the previous paragraph relate to the different types of school organisation proposals. Section 7 of the Act refers to competitions for new schools, Section 15 to proposals to close a school, and Section 19 proposals to make a prescribed alteration (e.g. an increase in size or change in age range). The local authority is normally the decision maker in all these cases. Schedule 2 to the Act defines the circumstances in which decisions may not be taken by the local authority but must be referred to an adjudicator. They include a competition for a new school where the local authority is one of the entrants, and provision for certain bodies to appeal against a decision by the local authority to close a school.

FINANCIAL IMPLICATIONS

17. Special Schools, like all mainstream schools in the Borough are funded from ringfenced Dedicated Schools Grant. The proposal to discontinue King Edwin School has not been made on financial grounds but for the reasons set out in paragraph 10 of this report and so that each student can reach his or her full potential. A decision to discontinue King Edwin School on 31st August 2008 would lead to estimated increased costs of £91k in the current financial year, followed by savings in subsequent years of around £0.777m per annum as set out in the table attached as **Appendix 2**. Increased costs in the short term would include those associated with the redundancy and early retirement of staff. The Council aims to continue to minimise these costs by seeking opportunities for redeployment, but this will not be possible in every case. King Edwin School has been allocated a delegated budget for the full twelve months of the current financial year. The Interim Executive Board is working to achieve a break-even financial position at 31st August based on five-twelfths of the budget. In the event of a decision to close the school on 31 August, seven-twelfths of the budget would become available to fund the transfer of pupils to Westlands School, continue other specialist placements and pay staff termination costs. Once the King Edwin site is no longer in use there may be other short term costs until its long-term use has been considered as part of the Council's strategy for assets. The financial implications from the discontinuation of King Edwin School, including the anticipated funding gap in 2008/09 of approximately £91k, can be funded from Dedicated Schools Grant and will be considered in conjunction with the Schools Forum. The charging of termination of employment costs to the central element of the schools budget is subject to the agreement of the Schools Forum. Annual revenue savings of ringfenced Dedicated Schools Grant of approx £0.777m from 2009/10 would be reinvested to improve provision for students in the special school sector within the borough.

LEGAL IMPLICATIONS

18. This proposal was published under Section 15 of the Education and Inspections Act 2006. Members must have regard to statutory guidance when determining whether to approve this proposal. The relevant sections of the guidance are summarised in paragraphs 3 to 11 of this report. The decision of Cabinet will be final.

RISK ASSESSMENT

19. A risk assessment has been carried out. The proposal is categorised as low to medium risk. Existing management systems and daily routine activities are sufficient to control and reduce risk.

COMMUNITY STRATEGY IMPLICATIONS

Economic Regeneration and Transport

20. No implications.

Safer Communities

21. No implications.

Children and Young People

22. The proposal is intended to improve services for a vulnerable group of children and young people.

Healthier Communities and Adults

23. No implications.

Liveability

24. No implications.

EQUALITY IMPACT ASSESSMENT

25. An Equality Impact Assessment has been carried out. No adverse impact on any group has been identified.

CORPORATE PARENTING

26. The proposal is intended to improve services for children and young people with BESD, some of whom are looked after by the local authority.

CONSULTATION INCLUDING WARD/COUNCILLORS

27. Initial consultation was described in the 24 April report to Cabinet. No representations have been received in response to the Statutory Notice.

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Background Papers

Cabinet reports dated 14 February and 24 April 2008.

Ward(s) and Ward Councillors:

Not ward-specific.

Property

Should this proposal be approved, the King Edwin site would become available for alternative use.