

Cabinet – 27 July 2016

Development of Early Learning and Childcare Provision and Associated Leasing of Premises

Portfolio: Councillor Burley, Children's Services

Related Portfolio: Councillor Jeavons

Service: Children's Services

Wards: Birchills, Leamore, Blakenall, Bloxwich West and Willenhall South

Key decision: No

Forward plan: No

1. Summary

- 1.1 The Council is required to secure early education places offering 570 hours a year for every eligible 2 year old. Free early education for eligible 2 year olds aims to improve disadvantaged children's social and cognitive outcomes which a 2 year old can access if parents are in receipt of qualifying benefits, if they are looked after by a local authority, have a current statement of special educational needs or an education, health and care (EHC) plan.
- 1.2 The Council has secured sufficient places for eligible 2 year olds in the majority of areas through provision in schools, day nurseries, playgroups and with childminders. However, parts of Willenhall, Birchills and Bloxwich still require some additional places. This proposal offers opportunity for new providers to extend places and will add to overall sufficiency.
- 1.3 The Council currently delivers early learning / childcare from 4 Children's Centre buildings – Alumwell, Birchills, Bloxwich and Edgar Stammers and this report seeks approval to transfer provision as this would provide further opportunities to develop early learning places in areas of need and progresses strategy for the Council to shift from provider to enabler of childcare provision (as there is no longer a statutory duty for Children's Centres to directly provide this service).
- 1.4 This proposal builds on decisions agreed by Cabinet at its meeting on 4th February 2015 to redesign Children's Centres including a reduction in the number of buildings, a shift from direct provision of childcare by the Council to enabling the delivery of sessional childcare for 2 year olds by schools or private/voluntary sector providers and the transfer of existing childcare services to schools or private/voluntary sector providers.
- 1.5 Further to Cabinet's decision in February 2015 (which specifically gave authority for officers to prioritise discussions with neighbouring academy schools for transfer of services), negotiations have taken place with Jubilee Academy and

Edgar Stammers Primary Academy in relation to services at Bloxwich and Edgar Stammers Children's Centres; however it has not been possible to agree terms. Consequently, an alternative provider now needs to be secured.

- 1.6 This report also proposes that childcare services delivered at Birchills Children's Centre are now transferred to a suitable external provider. This progresses the Council's strategy to be an enabler of services and will also reduce cost pressure to the Council that relates to direct provision. The proposal to lease the buildings, including office space, also offers opportunity to increase places to meet childcare demand in the local area.
- 1.7 In addition, this report proposes that Rosehill, the former youth building in Willenhall is used to enable new early learning /childcare provision to meet identified need and the redesign, retention and direct delivery of early learning and childcare from Alumwell for a further 12 months.
- 1.8 Since there is a shortage of early learning places for 2 year olds in the localities, should Cabinet approve the report recommendations, the Council might be restricting the use of [some or all of the] Children's Centres, previously built using sure start grant capital funding, to childcare purposes and to those tenants who successfully tender to provide childcare services .
- 1.9 The proposals described will necessitate the transfer, under TUPE arrangements of 57 staff who currently deliver childcare and early learning service at Birchills, Bloxwich and Edgar Stammers Children's Centre buildings.

2. Recommendations

In relation to the following sites:

- 1) Birchills Children's Centre;
 - 2) Rosehill Youth Centre;
 - 3) Bloxwich Children's Centre; and
 - 4) Edgar Stammers Children's Centre.
- 2.1 That Cabinet approve the undertaking of a competitive procurement process to determine the most suitable provider(s) for the provision of childcare and early learning and to commence delivery from early 2017.
 - 2.2 That Cabinet delegate authority to the Executive Director of Children's Services, in consultation with the Executive Director of Economy and Environment and the Portfolio Holders' for Children's Services and Regeneration, to consider and negotiate lease offers received from the market and to enter into short term leases up to a maximum length of 15 years, potentially including leases at less than best consideration, for which the annual rent may exceed £50,000, which represent the most favourable terms for the Council.
 - 2.3 That Cabinet delegate authority to the Executive Director of Children's Services in consultation with the Portfolio Holder for Children's Services to accept bids and award agreements on the best possible terms to enable the alternative model of childcare and early learning delivery by external providers and to authorise the sealing of any contracts, deeds or other related documents for such provision.

3. Report detail

3.1 Following the redesign of Children's Centres in 2015, the Council continues to deliver childcare from 4 Children's Centre buildings – Alumwell, Birchills, Bloxwich and Edgar Stammers. At its meeting on 4th February 2015, Cabinet approved a range of recommendations to redesign Children's Centres, including a shift from direct provision of childcare by the Council to enabling the delivery of sessional childcare for 2 year olds by schools or private/voluntary sector providers and associated actions to transfer management of childcare and early learning provision to schools or private providers. Over the last 12 months, the following provision has been successfully transferred out and quality childcare and early learning for 2 year olds is operating in former Children's Centre buildings by third party providers as follows:

3.1.1 Local Authority maintained Schools Provision

Greenfield School;
Leighswood School;
Fibbersley Park School;
Beacon School (Lighthouse);
St James Primary (Brownhills); and
Pheasey Park Farm.

3.1.2 Pre-School Learning Alliance Provision

Pelsall and
Hatherton (Beechdale).

3.1.3 Community Association commissioned provision

Streetly

3.2 It was further agreed by Cabinet on the 4th February 2015 to progress discussions with academy schools (with Children's Centre buildings on site) to scope transfer of services. However, following negotiations with Jubilee Academy and Edgar Stammers Primary Academy in relation to services at Bloxwich and Edgar Stammers Children's Centres, it has not been possible to agree terms.

3.3 Consequently, the Council has continued the delivery of childcare provision at Edgar Stammers and Bloxwich, while negotiations were progressing with the schools, alongside delivery of remaining childcare services at Birchills and Alumwell Children's Centres, which are on stand-alone sites.

3.4 In addition, it is proposed that the former youth centre building at Rosehill is also made available for the provision of childcare, as paragraph 3.8 of this report identifies that the Council has a shortage of early learning places in the Willenhall area.

- 3.5 Due to the limitations of the lease for Alumwell Children’s Centre, which restricts the Council’s ability to sub-let, the childcare provision on this site will be redesigned to deliver a more efficient offer for a further 12 months to allow for future options to be scoped and the childcare market to be developed.
- 3.6 Free early education for eligible 2 year olds aims to improve disadvantaged children’s social and cognitive outcomes so that by the age of 5 they are as ready as their more advantaged peers to start and fully benefit from school.
- 3.7 The Council is required to secure early education places offering 570 hours a year over no fewer than 38 weeks of the year for every eligible 2 year old. The Council has secured sufficient places for eligible 2 year olds in the majority of areas through provision in schools, day nurseries, playgroups and with childminders. However, parts of Willenhall, Birchills and Bloxwich still require some additional places. This proposal offers opportunity for providers to extend places and will add to overall sufficiency.
- 3.8 The position in Spring 2016 based on the home postcode of eligible children was:

Area	Eligible 2 year olds	Taking up a free place	Gap	Potential impact on supply of places
Rosehill	123	76	47	Sufficient places provided on a new site
Bloxwich	148	112	36	Sufficient places provided in increased accommodation
Birchills	126	60	66	Sufficient places provided in increased accommodation
Edgar Stammers	191	159	32	Gap may remain at 32 unless new provider wants to increase places for two year olds

- 3.9 This data includes the existing provision at Bloxwich, Birchills and Edgar Stammers Children’s Centres. It indicates that current provision in each of these areas needs to be maintained and increased for the Council to ensure 100% of places for 2 year olds are made available. The proposals to expand childcare and early learning provision where gaps are identified are summarised below:

Services and sites being considered for transfer

Birchills

- 3.10 The Council currently delivers 100 childcare and early learning places from the ground floor of Birchills Children’s Centre (branded as Stanley’s Day Nursery), and the first floor accommodates the Children’s Centre hub for the east locality.
- 3.11 Following the decision by Cabinet in February 2015 to cease the direct delivery of childcare and noting the shortage of funded 2 year old places for eligible children, it is proposed to identify, through a competitive procurement process, a suitable provider to operate childcare and early learning for 2 year olds, utilising the whole building. It is considered that the first floor accommodation could be altered to

convert it from office use to enable the number of childcare places to be increased by approximately 88 at any one time.

- 3.12 A consequence of this proposal will be the need to relocate the Children's Centre hub staff to alternative premises within the east locality and officers are currently considering the options available within the Council's property portfolio. The cost of this relocation will be determined during the review of available options.
- 3.13 It is proposed as part of the procurement process that the building will be offered on a new lease with a stipulation that the building can only be used as a day nursery within class D1 (non-residential institutions) of the General Use Classes Order 2014.
- 3.14 It is possible (subject to comments below) that the annual rent for the building will exceed £50,000 per annum, and therefore Cabinet approval is required for leasing
- 3.15 Due to the scale of the child care operation, it is considered that restrictions on the length of lease term may have a negative impact on the market interest for the property. Accordingly, it is proposed that the service and building will be marketed with a lease length of up to 15 years.
- 3.16 Capital grant funding totalling £1,000,000 was obtained for Birchills Children's Centre under the Sure Start programme. Risks linked to this funding are highlighted in paragraph 5.2 (below).

Rosehill Youth Centre

- 3.17 Following the closure of the 'Youth Support Service' activities at Rosehill Youth Centre, the building has been declared surplus to requirements. The childcare sufficiency data has identified a shortfall of funded early learning and childcare places in Willenhall. Part of the building has previously been used to deliver child care and the remainder is considered to be potentially suitable with capital investment.
- 3.18 It is proposed to competitively procure a suitable provider to develop and deliver provision of child care (including early learning places for 2 year olds eligible for free entitlement) from the building.
- 3.19 As with Birchills Children's Centre, it is proposed that, as part of the procurement process, the building will be offered on a new lease with a stipulation that the building can only be used as a day nursery within class D1 (non-residential institutions) of the General Use Classes Order 2014.
- 3.20 Funding is available from the 2 Year Old Capital Fund for the creation of 2 year old places. The successful bidder can submit an application for funding in respect of the cost of alteration works that will be required to maximise the capacity of the building. Applications to the 2 Year Old Capital Fund are subject to assessments of value for money in terms of the creation of new places.

- 3.21 Due to the need for capital investment for alterations to the building, it is proposed that the building be offered to the market with a lease length of up to 15 years.
- 3.22 In order to try to maximise the number of funded places for 2 year olds, the same criteria will be used as for Birchills which is likely to lead to lower rental bids. It is not possible to accurately identify the likely under value as it is likely that bidders will have different business plans for the delivery of child care, however, it is possible that the market rent would be discounted by up to 50% to reflect the proportion of funded places to be provided.

Bloxwich Children's Centre and Edgar Stammers Children's Centre

- 3.23 At its meetings on 4th February 2015 and 3rd February 2016, Cabinet approved the leasing of Bloxwich and Edgar Stammers Children's Centres to Jubilee Academy and Edgar Stammers Primary Academy respectively for the provision of childcare (including sessional places for 2 year olds eligible for free entitlement to learning).
- 3.24 Unfortunately it has not been possible to agree terms for the disposal of Bloxwich Children's Centre to Jubilee Academy or Edgar Stammers to Edgar Stammers Primary Academy. Consequently, approval is now required to undertake a competitive procurement process to determine suitable providers for these sites.
- 3.25 As with Birchills Children's Centre, it is proposed that, as part of the procurement process, the buildings will be offered on a new lease with a stipulation that the building can only be used as a day nursery within class D1 (non-residential institutions) of the General Use Classes Order 2014.
- 3.26 In order to try to maximise the number of funded places for 2 year olds, the same criteria will be used as for Birchills which is likely to lead to lower rental bids. It is not possible to accurately identify the likely rental undervalue as it is likely that bidders will have different business plans for the delivery of child care, however, it is possible that the market rent would be discounted to reflect the proportion of funded places to be provided.
- 3.27 To maximise a successful outcome from the procurement process, it is proposed that the Council may transfer furniture and equipment in existing establishments on the relevant sites, in addition to granting a lease on less than best consideration terms, to make it a commercially attractive proposition for the market.

Procurement Considerations

- 3.28 It is expected that the selected bidder(s) would maximise the number of funded 2 year old places delivered from the buildings. Accordingly, through a competitive procurement process, bids would be assessed against criteria to include:
- track record of childcare provision;
 - the ability to achieve an Ofsted registration;
 - the number of funded child care places to be provided; and
 - level of rent offered.

It should be noted that due to the differences in revenue levels between funded and private nursery places, the emphasis on the provision of funded places is likely to lead to lower rental bids, as part of expressions of interests, than would be received if the buildings were offered without this aim. It is not possible to accurately identify the likely rental undervalue as it is likely that bidders will have different business plans for the delivery of child care, however, it is possible that the market rent would be discounted to reflect the proportion of funded places to be provided.

- 3.29 The formal procurement process may involve some form of competitive dialogue process through which the Council will negotiate with bidders to secure the best possible terms for the Council.

4. Council priorities

- 4.1 Improving Safeguarding, Learning and the Life Chances for Children and Young People, raising aspirations.

5. Risk management

- 5.1 As stated previously, capital grant funding was obtained for Children's Centres under the Sure Start programme. The Council's funding agreement with the Department for Schools, Families and Children includes provisions whereby a proportion of the grant must be repaid in the event that the use of the buildings for childcare ceases.
- 5.2 Where the Council is the accountable body for Children's Centres which have been funded using sure start grant capital funding, it is under an obligation to notify and consult with the Education Funding Agency (EFA) about any proposal to dispose of a property funded by such grant. The claw back will apply for any property disposed of before 25 years' use as a Children's Centre. Claw back of funding is triggered where an asset, wholly or partly funded by the grant, is disposed of or the asset is no longer used to meet the aims and objectives of sure start. The EFA has clarified that the grant of a lease of Children's Centres by the Council could trigger a capital claw back risk to the Council.
- 5.3 To mitigate the risk of capital claw back robust contractual protections and indemnities would be sought from a successfully appointed provider. This would allow the Council to take back control of a Children's Centre where the provider causes the Council to breach overarching sure start grant terms by reason of user restriction breach. An application would also be made to the EFA to defer the grant claw back risk. The issue of claw back on a leasehold disposal was handled successfully for both Hatherton and Pelsall Children's Centres, leased to external organisations in 2015. Similarly deferrals have been agreed by the EFA for both Bloxwich and Edgar Stammers so there is no reason to think a deferral will not be forthcoming for Birchills. The process is simple but can only be undertaken when the new user of the building is known.

5.4 There is no guarantee that the Council will be able to secure viable bids from interested bidders following completion of a competitive procurement process. There is also the risk that some and not all of the current childcare services will transfer to an alternative provider, enabling alternative provision. The proposal identified in paragraph 3.27 of this report would mitigate these risks.

6. Financial implications

6.1 The grant of the leases would transfer ongoing liabilities for building maintenance, business rates and utilities to the tenants and would generate an income stream for the Council which would be determined following the completion of the competitive procurement process and the agreement of the terms for each of the leases.

6.2 Operational:

- The steer for the provision of childcare has been for the delivery model to cover its own costs through income generation and Early Years place funding. This includes funding those costs associated with rental and utilities. Based on the existing model of delivery for each site, the total annual loss across the 4 sites is estimated at £316,000.
- For 2016/17, based on the identified dates of transfers, the total anticipated loss for childcare provision for the year is estimated at £253,000, £126,000 relating to childcare operational costs and £127,000 of which relates to premises costs.
- Note – For all sites, Children’s Services are in the process of re-designing its delivery models to reduce this cost pressure to the Council of continuing with existing arrangements and improve the viability of each site where practical in the interim.

6.3 Corporate Position (budget):

- 1) There is no mainstream budget within Children’s Services to fund the £126,000 operational costs associated with the ongoing direct delivery of childcare and therefore this shows as a budget pressure with mitigating actions within the Children’s Services directorate action plan.
- 2) The annual premises costs for Alumwell are approximately £107,500 which will continue to be a budget pressure. The premises costs for Birchills are approximately £90,000. These costs will be borne by the tenant following the completion of the leasing of the property.

6.4 With regard to potential capital works to both Birchills and Rosehill, capital funding of circa £1m remains in place to support the creation of 2 year old places. Applications for funding are assessed to ensure value for money in terms of the creation of new places.

7. Legal implications

- 7.1 Although the Childcare Act 2006 (section 5A) introduced a duty for local authorities to provide sufficient early childhood services in their area, and outreach to parents to inform them of these services, there was no compulsion to deliver services through Children Centres. The introduction of a statutory basis for Sure Start was supported with the Apprenticeships, Skills, Children and Learning Act receiving Royal Assent on 12th November 2009. Sections 198-200 of this Act amended the Childcare Act 2006 to introduce requirements for local authorities to 'so far as is reasonably practicable' include arrangements for sufficient provision of Children's Centres to meet local need. Significantly, it also gave local authorities the option to provide early childhood services in settings other than a Children's Centre, provided that a Children's Centre environment had been fully considered.
- 7.2 Section 7 of the Childcare Act 2006 places a duty on local authorities to secure early years provision free of charge for eligible 2 year olds. This free entitlement to learning is aimed at improving disadvantaged children's social and cognitive outcomes so that by the age of 5 they are as ready as their more advantaged peers to start and fully benefit from school.
- 7.2 Section 123 of the Local Government Act 1972 ("the LGA 1972") provides a general dispositive power for a principal council. In general, there is an overriding statutory duty on a Council to achieve the best consideration reasonably obtainable when it is disposing of land or buildings. Accordingly, section 123 of the LGA 1972 places the Council under a statutory duty to obtain the best possible outcome (namely the best price reasonably obtainable) when disposing of land or buildings. The statutory obligation to obtain best consideration does not apply to short tenancies (i.e. a lease of less than 7 years).
- 7.3 If the Council seeks to dispose of land or buildings at less than best consideration then it has to obtain the consent from the Secretary of State. However, the Secretary of State has issued a general consent with a number of conditions which if they apply to the disposal means that the Council does not need to obtain the specific consent from the Secretary of State.
- 7.4 The relevant general consent is contained in the Circular 06/03: Local Government Act 1972 General Disposal Consent (England) 2003 Disposal of Land for less than the best consideration that can reasonably be obtained. The Council may dispose of land or buildings at less than best consideration without the need for specific consent of the Secretary of State provided the following conditions are satisfied:
- a) the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any person's resident or present in its area:
 - i) the promotion or improvement of economic well-being;
 - ii) the promotion or improvement of social well-being;
 - iii) the promotion or improvement of environmental well-being; and
 - b) the difference between the unrestricted value (i.e. the best price reasonably obtainable for the property on terms that are intended to

maximise the consideration) of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).

- 7.5 In view of the impact on viability for nursery operators of a requirement to maintain a high proportion of funded places, it is likely that the rental bids received for the properties may be lower than could be achieved if the properties were marketed without restriction. Accordingly it is likely that the lettings of Birchills , Bloxwich, Edgar Stammers Children's Centres and Rosehill Youth Centre would represent disposals at less than best consideration but only if leases offered by the Council are for more than 7 years.
- 7.6 Legal Services and Procurement will work with the service area to ensure the conduct of a compliant procurement process and that appropriate written agreements in a form approved by the Head of Legal and Democratic Services shall be made and executed in accordance with the Council's Contract Rules.
- 7.7 The Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE'), as amended, will apply to any transfer of the provision of child care and early learning activities to an external provider. There will be a 'relevant transfer' for the purpose of the Regulations. The Council must ensure that it complies with these Regulations when informing and consulting with its staff that are eligible to transfer to a new provider. Failure to inform and consult with staff, in accordance with the Regulations, can result in claims being brought by employees or their representatives against the Council and any new provider. The compensation that a Tribunal can award against the Council and any new provider is up to 13 weeks' pay per affected employee.

8. Property implications

- 8.1 The leasing of the buildings would ensure the transfer of property liabilities to the respective tenants and would secure the ongoing beneficial use of the buildings.

9. Health and wellbeing implications

- 9.1 The Council is required to secure early education places for every eligible 2 year old. This proposal will increase free early education for eligible 2 year olds and in doing so, improve disadvantaged children's social and cognitive outcomes
This proposal adheres to the following objectives of the Marmot Review:
- Give every child the best start in life – by securing free entitlement to early education places for disadvantaged 2 year olds
 - Enable all children, young people to maximise their capabilities and have control over their lives – by providing good quality childcare and learning opportunities to disadvantaged 2 year olds.

10. Staffing implications

- 10.1 Due to the application of TUPE, there are 57 members of staff that have been identified as currently carrying out child care and early years provision. Those staff may be eligible to transfer to any appointed provider under the service

provision change at Birchills, Bloxwich and Edgar Stammers Childcare. The Council must ensure that it complies with its duty to inform and consult with its staff pursuant to a transfer. The Council may be jointly liable for any failure to properly inform and consult with staff prior to the transfer. As the employer of the staff, the Council will maintain all rights and liabilities in respect of the staff prior to the transfer date.

11. Equality implications

11.1 None arising from this report.

12. Consultation

12.1 Comprehensive consultation with the public, service users and partners informed the previous Cabinet decision (February 2015) to a shift from direct provision of childcare by the Council to enabling the delivery of sessional childcare for 2 year olds by schools or private/voluntary sector providers and the transfer of existing childcare services to schools or private/voluntary sector providers

12.2 Informal consultation with staff who would be subject to TUPE arrangements as part of the proposed transfer of childcare, together with their trade union representatives has taken place. Formal consultation with staff would commence in parallel with the procurement process, subject to Cabinet approval.

Background papers

Cabinet Report – Children’s Centre Redesign – 4 February 2015

Cabinet Report – Children’s Centre Disposals – 3 February 2016

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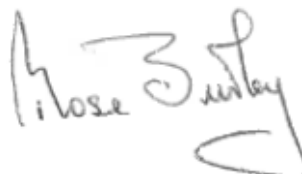
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