

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to: **CABINET**

Report of: **Corporate Director For Children and Young People**

Date of Decision: **12th December 2017**

SUBJECT: **REVIEW OF COUNCIL RUN DAY NURSERIES**

Key Decision: **Yes** **Relevant Forward Plan Ref: 002307/2016**
If not in the Forward Plan: **Chief Executive approved** ☐
(please "X" box) **O&S Chair approved** ☐

Relevant Cabinet Member(s) **Councillor Carl Rice – Cabinet Member for Children, Families and Schools**
Councillor Majid Mahmood – Cabinet Member for Commercialism, Commissioning and Contract Management

Relevant O&S Chair(s): **Cllr Susan Barnett - Schools, Children and Families**
Cllr Mohammed Aikhlaq- Corporate Resources & Governance

Wards affected: **Washwood Heath**
Nechells
Lozells & East Handsworth
Shard End
Ladywood
South Yardley
Springfield
Bournville
Soho
Bordesley Green

1. Purpose of report:

- 1.1 To report to Cabinet the outcome of the review of the council run day nurseries services (hereafter referred to as nurseries).
- 1.2 To seek approval to commence the consultation process on the future of the nurseries based on the information contained in this report, to ensure ongoing childcare sufficiency.

2. Decision(s) recommended:

That the Cabinet:-

- 2.1 Approves the commencement of a consultation process to include a proposal to close the fourteen council run nurseries as outlined in paragraphs 5.10, 5.11 and 5.12 with a

view to making the buildings available to the childcare market to ensure ongoing childcare sufficiency.

- 2.2 Notes the intention to report the outcome of the consultation to Cabinet for a final decision in April 2018.

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3. Consultation:

3.1 Internal

- 3.1.1 A recommendation to review the nurseries was first presented to the Cabinet Member for Children, Families and Schools at a briefing on 28th July 2016 and Cabinet Member for Commercialism, Commissioning and Contract Management on 1st August 2016 and 21st November 2017. Multiple briefings have taken place since with the Cabinet Member for Children, Families and Schools, the latest being 20th November 2017.
- 3.1.2 Senior managers from each of the fourteen nurseries have been consulted about the review as part of ongoing work to reduce financial pressures and improve quality of provision. Managers have advised their staff of the review of the day nurseries and kept them up to speed with the process.
- 3.1.3 A verbal report on the review of nurseries was shared with the Trade Unions. The proposals contained within the report were tabled and discussion was invited with an opportunity for written comments to be included within the report. An official dispute has been lodged by the GMB union which was received on the 1st November 2017 on the basis of a lack of consultation. This dispute was rejected on the basis that the report is seeking permission to consult. A meeting has been arranged to discuss this further with the GMB representatives on the 6th December 2017.
- 3.1.4 Discussion has been taking place with colleagues from the Early Help Service. This is in relation to the buildings which house Family Support and Safeguarding teams (FSSG) on the same site as house nurseries. The outcome of this is that in Park Road and Reameadow Children's Centres the FSSG teams have requested the use of additional space freed up following the novation of the contract to Birmingham Community Healthcare Trust (BCHCT). If the nurseries were to close then there will be a direct impact on the FSSG Teams as the full costs of the building would need to be picked up by these teams or they would have to relocate and the building would be re-utilised.
- 3.1.5 There have been ongoing discussions and visits to sites to look at the existing arrangements for the co-located FSSG. This has been to ensure space is available for

these teams to continue to operate from or to identify additional space for them to utilise once the children's centre is no longer operating from that building.

- 3.1.6 Officers from City Finance and Legal and Governance have been involved with the preparation of this report.

3.2 External

- 3.2.1 External consultation has not yet taken place. It is intended that a full public consultation will be undertaken to engage with key partners and stakeholders following approval from Cabinet.
- 3.2.2 Discussion is also ongoing with the BCHCT with regard to the Health and Wellbeing (H&WB) service as some of the sites they plan to use currently house nurseries. A closure of any of the nurseries may impact on the running costs for the H & WB services. The outcome of the discussions with BCHCT and any cost implications will be reported back to Cabinet in April 2018.

4. **Compliance Issues:**

- 4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

- 4.1.1 The Council of the future will be much smaller and more strategic and less about direct service delivery and more about supporting a wider range of partnerships and providers, including social enterprises and the contribution of voluntary effort and the community. By developing these relationships the provision of day care services will be effectively managed in the Private, Voluntary and Independent sector (PVI) and continue to support the wide ranging needs of our existing and any new customers.
- 4.1.2 With the Childcare Act 2006 clearly stating that the Local Authority will be the provider of last resort this is a strong factor in working more closely with the PVI sector (see section 4.3 for further detail)
- 4.1.3 The Children and Young People Directorate Education Delivery and Improvement plan 17-18 recognises Birmingham City Council's commitment to ensure Birmingham is a great city for children and young people to learn and grow up in. Underpinning the plan is the aim to narrow the gap in achievement between those groups performing highly, above national average, and those groups that have underperformed for a long time.
- 4.1.4 The directorate outcomes are:
1. Securing a good school place for children in the city
 2. Raising attainment and closing gaps for children across Birmingham
 3. Ensuring children and young people with SEND have their needs met in appropriate provision
 4. Ensuring children are safe and developing resilience
 5. Preparing young people with the skills they need for life

4.2 Financial Implications

(How will decisions be carried out within existing finances and Resources?)

- 4.2.1 The current sustainability issues affecting the nurseries have been a significant issue for several years and although some considerable improvement has been made during the last two financial years this has not led to a sustainable position. The current deficit forecast for all fourteen of the nurseries in 2017-18 is £686k. Compensatory in-year savings have been identified to mitigate this pressure of £485k from the Early Years, Childcare and Children's Centre service (EYCC) funding. Additional savings are being made in year by the nurseries, through renegotiating contracts for services and increasing the number of places available where possible. The current situation is not financially sustainable and therefore through consultation we can explore the following areas:
- 4.2.2 Continue to operate any nurseries that are financially self-sustaining within two years and close the remaining nurseries.
- 4.2.3 Full closure of all fourteen of the nurseries and release the buildings for the childcare market to continue provision of a service and generate a rental income. The one off cost of keeping the nurseries open until closure is included within the budget planning process for 2018/19. In closing the nurseries there could be redundancy costs and a pension strain that need to be considered. Redundancy costs are estimated at £310k for twelve of the nurseries; this includes the two nurseries in which staff are employed by schools. The remaining two nurseries are employed by third sector providers.
- 4.2.4 Continue to operate any nursery that is situated within an area of need for sufficiency where an alternative provider to the Council cannot be identified (provider of last resort) and close the remaining nurseries where they are either not required or there is an appetite for the childcare market to deliver. This will require a maximum funding of £0.5m to be identified and committed on an ongoing basis (as identified in appendix 3).
- 4.2.5 As some of these nurseries are linked to children's centres there is a potential capital claw back of £2.167m (see appendix 3 for the amounts per building), unless the buildings continue to be utilised for under-fives provision. This will be explored further with the Department for Education (DfE) to ascertain future building use following the consultation. We are looking at the options to mitigate the clawback by for example making the nurseries available to the childcare market.
- 4.2.6 There are four nurseries that also have FSSG teams housed in the same building as the nurseries. The future of these teams has been looked at by property services and Early Help service in order to mitigate any future risks to their occupation in these buildings. They are proposing to locate more staff in two of these buildings and remove the teams from the other two. The Council owns thirteen of the nursery buildings with one being a primary school. The buildings are currently part of the Early Years services portfolio and therefore any rental from these buildings would be part of the service areas income.

4.3 Legal Implications

- 4.3.1 Section 8 of the Childcare Act 2006 describes the 'Powers of local authority in relation to the provision of childcare' as (3) An English local authority may not provide childcare for a particular child or group of children unless the local authority are satisfied that (a) that no other person is willing to provide the childcare (whether in pursuance of

arrangements made with the authority or otherwise), or (b) if another person is willing to do so, that in the circumstances it is appropriate for the local authority to provide the childcare. This does not affect the provision of childcare by the governing body of a maintained school, or the provision of day care for children in need in accordance with section 18 of the Children Act 1989.

4.3.2 Early Education and Childcare Statutory guidance for local authorities refers to the Sufficiency Duty. This guidance refers to the Childcare Act 2006, specifically:

- Section 6, which places a duty on English local authorities to secure sufficient childcare for working parents.
- Section 7 (as substituted by section 1 of the Education Act 2011), which places a duty on English local authorities to secure early years provision free of charge. Regulations made under section 7 set out the type and amount of free provision and the children who benefit from the free provision.
- Section 7A (as inserted by the Children and Families Act 2014). Regulations made under section 7A make provision about how local authorities should discharge their duty under section 7.
- Section 9A (as inserted by the Children and Families Act 2014). Regulations made under section 9A limit the requirements local authorities can impose when they make arrangements to deliver early education places for two-, three- and four-year-olds.
- Section 12 which places a duty on English local authorities to provide information, advice and assistance to parents and prospective parents.

In relation to staff, the TUPE regulations may apply if, following the proposed consultation and further Cabinet decision, there are new providers of the nursery services.

4.4 Public Sector Equality Duty

4.4.1 The initial assessment was updated in October 2017 (Reference number EA002393). This identifies that the proposed closure is likely to have a significant impact on the current services (Appendix 4). A full assessment of the impact will be undertaken alongside the public consultation.

4.4.2 The potential impacts to closing the nurseries are:

- Loss of provision locally for children under five and their families in the named wards across Birmingham if the childcare market does not see a sustainable model for delivery;
- Accessibility of services to existing families if they are moved or relocated to other nursery providers;
- One hundred and twenty staff redundancies across the fourteen nurseries if the childcare market does not see a sustainable model for delivery;
- Potential for not meeting the sufficiency duty – which requires the Local Authority to secure sufficient early years provision;

- Implications for other services currently co-located in council buildings currently delivering nursery services.

5. Relevant background/chronology of key events:

- 5.1 The council run nursery provision was introduced in 1994 by Social Services and was formally known as community day nurseries. They were developed to provide consistency of service provision across the city, support our council employees and to support our vulnerable children. Included in this was the introduction of 150 full time fee paying places, and priority for these places was given to children of staff who worked for the City Council.
- 5.2 This policy was continued when nurseries transferred from Social Services to Education in 1998 when the nurseries were either designated as children's centres or became linked to local children's centres since 2007. They now form part of a complex landscape in Early Years.
- 5.3 Nursery provision operates from fourteen sites across Birmingham, and provides a range of fee-paying and Early Education Entitlement (EEE) funded places for children under 5. (See Appendix 5 for a map of locations.) All 3 to 4-year-olds in England can access 570 hours of free early education entitlement or childcare per year. If this is taken during term-time only, this works out as 15 hours a week over 38 weeks of the year. From September 2017, the government has increased the free early education or childcare for families who meet certain criteria to 30 hours a week (if used over 38 weeks a year).
- 5.4 The nurseries currently employ one hundred and twenty staff. Seventy of whom are employed directly by the council, eighteen by schools and the remainder (thirty-two) by partner organisations - Spurgeons and South & City College. On average six hundred children attend the fourteen nurseries each week.
- 5.5 The nurseries have had the following deficits over the last three years which have been funded from a centrally held sustainability pot in 2014/15 and from the trajectory grant for two-year olds in 2015/16 and 2016/17. The trajectory funding was fully utilised and is not available for this purpose in 2017/18:-
 - 2014/15 = £744,989
 - 2015/16 = £578,813
 - 2016/17 = £638,719
- 5.6 The forecast deficit for 2017-18 is currently approximately £686k- despite an increase in fees from January 2017. Compensatory in-year savings of £485k has been identified within the EYCC to cover this pressure. Additional work on making further savings in-year to reduce this forecast is ongoing. See appendix 2 for a detailed current financial position.
- 5.7 Given the unsustainable financial position a review has been undertaken by Early Years Officers on the way forward. The review has taken account of the current occupancy levels, financial positions, potential increases in occupancy and income, and restructuring of the staff teams. This has generated the areas outlined above.

- 5.8 To date the following work has been undertaken in order to improve the current business model:-
- Review of current staffing levels, hours of work and identifying the FTE;
 - Update of the organisational structures with HR to ensure staff details are correct to support the redesign;
 - Developed a new Grade 2 Nursery Officer post to support any restructure;
 - Establish clear overview of occupancy levels and vacancies;
 - Financial efficiency reviews of individual nurseries to establish clear overview of essential costs and where savings can be achieved;
 - Increase in fees rates and EEE funding rates to support an increase in income;
 - Review of Ofsted arrangements and centralising responsibilities for this, to ensure consistency of oversight;
 - Reviews of quality and impact - undertaken by council Early Years consultants and Locality Resource Officers to ascertain areas of strengths and weakness and develop plans for improvement.
- 5.9 Despite these actions thirteen of the fourteen nurseries remain financially unviable and do not reach a break-even point. They are therefore not self-sustaining and will always require support of £0.5m per year (see appendix 3 for the detail). The current situation is not financially sustainable and therefore through consultation we can explore the following areas:
- 5.10 **Continue to operate any nurseries that are financially self-sustaining and close the remaining nurseries.** Detailed work has been done prior to the consultation process to make the nurseries self-sustainable going forward. Whilst this has not been achieved the formal consultation process will provide a further opportunity for this to be achieved. However, should this not be possible there is one nursery that shows a financially sustainable model. This nursery will need a small increase in nursery places and sufficient time to allow for these places to be filled. The remaining thirteen nurseries could be offered to the childcare market.
- 5.11 **Closure of all nurseries and release the buildings for the childcare market to continue provision of a service and generate a rental income** - This would require a scoping of the market potential for releasing the buildings and generating income.
- 5.11.1 In particular where the buildings are only partially utilised as the building currently accommodates a children's centre this would create an additional increase in running and premises costs for BCHCT the new provider for H&WB Service. The impact of this for the new Health and Well Being contract (if any) will be reviewed and reported back in April 2018.
- 5.11.2 Full closure would mean that the buildings would need to be disposed of if the city did not have a future need for the buildings. There would potentially be approximately one hundred and twenty staff redundancies and a potential claw back of £2,167m. There are two ways that this option could be explored:-
- (i) Commission the service 'As Is' which will allow for the transfer of staff to a new provider (TUPE);

- (ii) Or immediate closure with staff redundancies and an opportunity to offer the buildings via lease or sale to the childcare market at a later date.
- 5.11.3 In recommending closure, consideration will be given to seek alternative local delivery of the nursery services from existing providers such as PVI and schools. This will form part of the consultation following the Cabinet decision. This should enable capital claw back to be mitigated.
- 5.11.4 Commissioning the service 'as is' will enable TUPE transfer of staff and ongoing access to childcare for current service users.
- 5.11.5 In total the staffing assignment is one hundred and twenty across all fourteen nurseries. Eighty-eight of the staff are Council employees with the remainder (thirty-two) being employees of South and City College and Spurgeons as third sector partners, the remaining twelve nurseries are either corporate or schools employed staff.
- 5.11.6 Discussions are taking place to ensure that the staff from South and City College and Spurgeons are considered fairly as part of any service redesign process. The total redundancy costs for the council staff is estimated at £0.3m. In addition there will be a cost associated to the Pension Strain.
- 5.11.7 Full closure of the nurseries would be required to take place by the end of August 2018 in order to be achievable within current budget allocations. Parents of the children currently accessing a service will be signposted to alternative provision with support from the Early Years, childcare and children's centres service.
- 5.12 **Continue to operate any nursery that is situated within an area of need for sufficiency where an alternative provider to the Council cannot be identified (provider of last resort) and close the remaining nurseries where they are either not required or there is an appetite for the childcare market to deliver.** This will be explored as part of the consultation. If any of the nurseries are identified as being required to meet the Sufficiency Duty but the consultation does not demonstrate that an alternative provider could be found, the statutory duty would not be met and the Council would become the provider of last resort. This will require a maximum funding of £0.5m (as identified in appendix 3) but will only be quantifiable following consultation. This would require an ongoing financial commitment and the need to allocate additional funding to the Early Years budget as the nurseries cannot reach a level of being self-sustaining.
- 5.13 It is proposed to undertake formal consultation on all areas commencing in January 2018. The outcome of the consultation will be brought to Cabinet in April for further consideration and decision.
- 5.14 The Statutory Duty within the Childcare Act is quite explicit that Local Authorities should be the provider of last resort. Closure of the nurseries would enable quality buildings to be available to the local childcare market and still enable the statutory duty of Sufficient Childcare places to be provided. The consultation will enable us to identify the level of interest from alternative providers to confirm that the Council's role as a provider is not required.

6. Evaluation of alternative option(s):

- 6.1 Do nothing – There will be an ongoing financial dependency as has been evidenced historically and specified in 5.5 of this report. Funding will need to be identified outside of the current Early Years budget.

7. Reasons for Decision(s):

- 7.1 To mitigate the expected budget pressures within the overall Early Years budget, and to commence consultation on those proposals.
- 7.2 To ensure that the council can continue to meet the statutory duties for Sufficient Childcare and Early Education as outlined within section 4.3 of this report

Signatures

Date

Councillor Carl Rice
Cabinet Member for Children,
Families and Schools

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Councillor Majid Mahmood
Cabinet Member for Commercialism,
Commissioning and Contract Management.....

Colin Diamond
Corporate Director
Children and Young People:

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List of Background Documents used to compile this Report:

1. Childcare Act 2006.
2. DfE: EYFS – Early Years Foundation Stage 2014
3. Early Education and Childcare – Statutory Guidance for Local Authorities, 2017

List of Appendices accompanying this Report (if any):

1. EYCC Overview
2. Current Financial Position
3. Financial Models for Break-Even
4. Equalities Assessment – Stage 1
5. Map of locations of the 14 nurseries