

DETERMINATION

Case reference: STP590

Referral body: Birmingham City Council

Proposal: To establish a new maintained nursery school under section 11 (1) (a) of the Education and Inspections Act 2006.

Date of decision: 17 June 2014

Determination

Under the powers conferred on me in Schedule 2 to the Education and Inspections Act 2006, I hereby approve the proposal to establish a new maintained nursery school under section 11(1)(a) of the Education and Inspections Act 2006 with effect from 1 September 2014.

The referral

1. Birmingham City Council (the council) wrote to the Office of the Schools Adjudicator on 11 February 2013 referring its statutory proposal to establish a new maintained nursery school on the site of the existing independent Edith Cadbury nursery school, which has charitable status, from 1 September 2014. The new school would cater for pupils between the ages of 3 and 5. It would provide 45.8 full time equivalent places for boys and girls. It is proposed that the new nursery school would continue to provide places for families in the same area as the independent nursery currently does.

Jurisdiction

2. Under Section 11(1)(a) of the Education and Inspections Act 2006 (the Act), local authorities may publish proposals to establish new schools. The Secretary of State's consent is not required and where the admission authority is the local authority, the Office of the Schools Adjudicator is the decision maker.
3. On 1 November 2012, the council published notices to establish a new community nursery school. The notices were in the necessary form. Following the consultation period of six weeks, the council referred the matter to the Schools Adjudicator, and provided supporting documentation.
4. I am satisfied that this proposal has been properly referred to me in accordance with Schedule 2 to the Act and that, therefore, I have jurisdiction to determine this matter.

Procedures

5. In considering this matter, I have had regard to all relevant legislation and guidance.
6. I have considered all the papers put before me including:
 - documents detailing the proposals;
 - a copy of the statutory notice;
 - the summary of the consultation on the proposals;
 - documents relating to the legal and property aspects of the proposal including correspondence between the Edith Cadbury Trust and the Charities Commission and the draft deed of transfer;
 - related papers submitted to the council's Cabinet; and
 - the school's Ofsted inspection report of October 2011.

The Proposal

7. The proposal is to establish a new community nursery school in the premises of the existing voluntary aided independent nursery school which would close. The new community nursery school would cater for pupils between the ages of 3 and 5. It would provide 45.8 full time equivalent places for boys and girls, the same number as the existing independent nursery. There would therefore be no change to the existing nursery provision. The proposal is to close the existing school and open the new school on 1 September 2014.
8. A shadow governing body has been set up and has already held meetings.

Consideration of Factors

Background

9. This case has been lengthy, not because of any concerns on educational grounds, but because of the need to resolve some legal and property matters. When the trustees approached the council with the idea of taking the school into the maintained sector, the council held a meeting on 5 February 2013. This was before they had submitted the proposal to the Office of the Schools Adjudicator. A number of issues were identified. It was agreed that these would have to be resolved before a change of status could be implemented. In my judgement, it would not have been sensible for me to consider this proposal until these legal and property issues had been resolved as it would not have been safe to make a determination.

Legal and property issues

10. The issues identified were as follows. Clarity was needed over the ownership of the building. The land is owned by the council and the Trust was to seek legal advice on releasing the building to the council.
11. Questions relating to the surrender and/or amendment of existing leases between the Trust and the council would have to be resolved.
12. The condition of the building would have to be assessed and Trust approval be secured for it to be released to the council without compensation, since the Trustees had fund-raised to maintain and equip the building.
13. A commercial transfer agreement would need to be in place to transfer assets within the building.
14. Arrangements would have to be in place for the transfer of staff under a TUPE agreement.
15. A new governing body would have to be set up.
16. The council's Cabinet would need to approve the transfer.
17. The necessary negotiations and legal processes have taken place and all these issues have now been resolved in principle. Cabinet approved the proposal on the 19 May 2014 and the scrutiny call-in period expired on the 23 May 2014. The surrender of leases and transfer of assets is due to take place this month (June 2014). Arrangements for staffing transfer under a TUPE agreement could not be agreed until the proposal had Cabinet approval. Now that that has been secured, consultations will take place this month. A new governing body has been set up and it held its first meeting on 13 September 2013.

Standards of education

18. The existing independent nursery school was inspected by OFSTED on 3 – 4 October 2011. It was rated good on overall effectiveness and capacity for sustained improvement. Behaviour was rated outstanding. The council considers the proposal will benefit both staff and children. The school will gain access to local authority educational support and expertise. It will become part of the established local authority nursery network, thus ensuring stability and security for its future.

School roll

19. There would be no change to the number of places provided. The new community nursery school would cater for pupils between the ages of 3 and 5. It would provide 45.8 full time equivalent places for boys and girls, the same number as the existing independent nursery. It would admit boys and girls. It would serve the same area of the city. The existing nursery provision would be unchanged.

Premises and Costs

20. The current site and buildings would be used by the new school. There are no estimated additional premises costs associated with the proposal.

Community cohesion

21. The school will be fully inclusive. Ofsted judged the school's work in promoting community cohesion to be good and this will continue.

Consultation

22. The consultation on this proposal was carried out between 26 September 2012 and 31 October 2012. The consultation document was sent to parents, staff and other stakeholders and partners.

23. Ten responses were received from parents and staff. All were in favour of the proposal. Eight responses were received following the publication of the statutory notice and all were supportive of the proposal.

Conclusion

24. The practical issues arising from this proposal have now been resolved. The proposal has the support of parents. The school will benefit from being part of the council's network of nurseries and parents in the area will continue to have access to a good nursery. I therefore approve this proposal.

Determination

Under the powers conferred on me in Schedule 2 to the Education and Inspections Act 2006, I hereby approve the proposal to establish a new maintained nursery school under section 11(1)(a) of the Education and Inspections Act 2006.

Dated: 17 June 2014

Signed:

Adjudicator: Janet Mokades