

# POLICY AND PERFORMANCE CO-ORDINATING COMMITTEE

Thursday, 27 February 2014

<u>Present:</u>	Councillor	S Foulkes (In the Chair)	
	Councillors	A Hodson	J Stapleton
		A Brighthouse	D Elderton
		P Doughty	L Fraser
		P Glasman	A Sykes
		M McLaughlin	W Clements (In place of S Williams)
		B Mooney	J Salter (In place of RL Abbey)
		D Roberts	D Realey (In place of S Whittingham)
		Ms N Smith	

## 39 CO-OPTED MEMBERS

The Committee was reminded that the meeting had been adjourned on 5 February 2014 until this evening so that the Council could be recommended to extend the Committee's Membership to include two Parent Governor and appropriate Diocesan Authorities' representatives (as statutory co-optees) to sit on the Committee and vote when it considered educational matters. (Minute No. 38 refers.) The Chair apologised for having to adjourn the meeting on 27 February 2014. It had been necessary because it had been important to ensure that its Membership was correct when it considered the two call-ins which related to educational matters.

Consequently, the Council, at its meeting on 25 February 2014, in order to meet legal requirements, had co-opted onto the Committee:

the following two Parent Governor representatives:

- Mrs H Shoebridge (until 28 October 2015); and
- Mrs Nicola Smith (until 8 February 2017)

and;

the following two Diocesan Authority representatives

- Damien Cunningham (representing the Roman Catholic Diocese of Shrewsbury); and

- a representative of the Church of England Diocese of Chester (currently a nomination has not yet been made).

(Minute No. 78 refers.)

Mrs Smith was in attendance and the Chair welcomed her to her first meeting of the Committee.

40 **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors R Abby, S Whittingham and S Williams, Mrs H Shoebridge and Damien Cunningham.

41 **CODE OF CONDUCT - DECLARATIONS OF INTEREST RELEVANT AUTHORITIES (DISCLOSABLE PECUNIARY INTERESTS) REGULATIONS 2012, INCLUDING PARTY WHIP DECLARATIONS**

Mrs Nicola Smith informed that she had a relative who worked at the Lyndale School.

42 **PROCEDURE FOR CONSIDERING A DECISION THAT HAS BEEN CALLED-IN**

The Committee noted the procedure for dealing with a decision that had been subject to the Council's call-in process. This procedure had been agreed and adopted by the Committee for this purpose at its meeting on 24 June 2014. (Minute No. 4 refers.)

43 **CALL-IN OF A DELEGATED DECISION - CABINET MINUTE NO. 129 - REPORT SEEKING APPROVAL TO CONSULT ON THE CLOSURE OF THE LYNDALE SCHOOL**

In accordance with the procedure previously agreed by the Committee, the Chair referred to the decision of the Cabinet which agreed to consult on the closure of the Lyndale School; and authorise the Director of Children's Services (or her nominee) to compile and produce the appropriate Consultation Document and proceed with the Consultation exercise as soon as practicably possible. (Cabinet Minute No. 129 refers.)

The decision had been called-in by Councillors T Harney, P Gilchrist, J Green, I Lewis, C Povall and P Williams, on the following grounds:

The Cabinet was not given the full information to make a decision:

- The category of Complex Learning Difficulties (CLD) includes children with Profound and Multiple Learning Difficulties (PMLD) and children

on the Autistic Spectrum. Their needs are different. This is not made clear.

- The School has been in discussion with the LA about its future for 8 years. The uncertainty has caused some parents to send their children elsewhere.
- The educational needs of the children are not analysed.
- In paragraph 2.8, the LA admits they have failed to consider the funding of the school over past years. The funding arrangements are, in reality, in the hands of the LA and, in fact, were agreed at the same time as this proposal.
- The argument about overheads ignores the present discussions between the Local Authority and Governors about reducing overheads.
- Table 2 does not discuss the different nature of the intakes of the 3 schools. This is misleading.
- The work done by Eric Craven on behalf of the LA looking at the needs of the PMLD pupils at the Lyndale and other schools has never been referred to.
- The resolution of the Council of February 14 2010 and the work done by the Local Authority following this have not been referred to, not even mentioned. This should have formed the context for the present decision.

The Committee was invited to consider the decision that had been made and determine, in the light of evidence to be presented, the most appropriate course of action. The Committee had no power to overturn a Cabinet decision, or to substitute its own decision in place of the original. The options open to the Committee were:

- to take no further action, in which case the original decision shall take immediate effect and may be implemented;
- to refer the decision back to the Cabinet Member for reconsideration, setting out in writing the nature of the Committee's concerns;
- to refer the matter to the Council, if the Committee believes that the decision was outside the policy framework or contrary to or not wholly in accordance with the budget.

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#### **Explanation of the Call-In by the Lead Signatory, Councillor Tom Harney**

Councillor Tom Harney provided a brief rationale for the call-in of the Cabinet's decision. He informed that there were a lot of reasons for calling in the decision and some he referred to as 'technicalities'. He considered that things had been missing from the Cabinet's report which should have been included. Councillor Harney believed that the focus should be on the lives of the Children in the School.

Councillor Harney reminded the Cabinet that at its meeting on 14 February 2014 the Council had received a petition from the Lyndale School of 1874

signatures asking the Council to develop, as a matter of urgency, a consistent and coherent policy for children with profound and multiple learning difficulties. Consequently, it had been resolved unanimously

‘That the Council initiates, as a matter of urgency, a thorough review of the current provision for children and young people with profound and multiple learning difficulties (PMLD) on Wirral. The review will produce a comprehensive policy regarding the best ways to educate, support and care for these children and young people including transition from and provision during life beyond school. Parents will be fully involved in the planning and writing of this policy.

This review will be presented to Cabinet by the end of 2011.’

(Minute No. 80 (B) refers)

No reference had been made to this work in the Cabinet report. The children who attended the Lyndale School had key special needs and a lot of them needed 1 to 1 attention.

### **Explanation of the Decision Taken by the Cabinet – Councillor Tony Smith – Cabinet Member – Children and Family Services**

Councillor Tony Smith informed that under the Education Act 1996, the local education authority had a statutory duty to ensure that there were sufficient school places in its administrative area with fair access to educational opportunity to promote the fulfilment of every child’s potential. To do this any future plans had to consider the educational benefits for children, value for money, and the ways schools could develop collaborative practice in the best interests of children.

Considerations taken into account when proceeding to consult on the closure of a school included viability and sustainability, standards, diversity and parental preference, pupil numbers and financial implications. These were not exhaustive and each case would have different circumstances and would need to be considered on their individual merits.

In the case of the proposed closure of the Lyndale School, the local education authority would also need to take into account the current provision for children with CLD and PMLD at the Lyndale, Elleray Park and Stanley Primary Schools and Foxfield and Meadowside Secondary Schools.

Councillor Smith told the Committee that the future of the Lyndale School had been under consideration for six to eight years and during this time its roll had reduced to the extent that there were now only 23 pupils in the School. The falling roll was bringing the School’s future viability into sharp focus.

Councillor Smith reported that in 2013 a new system of funding had been introduced by the Department for Education for the funding of High Needs pupils in schools. This had established a new national system for the funding of specialist provision, with each school receiving an amount of £10,000 per place and an additional top up based on individual pupil needs. This new system was known as Place plus. In respect of "Place", funding authorities were obliged to review specialist provision ahead of confirming 2014/15 place numbers.

Councillor Smith informed the Committee that the case for concern at the Lyndale School was that the Top Up funding (i.e. the "Plus" element) would reflect the additional support costs in excess of place funding for individual pupils and students and would take into account factors such as the pupils individual needs and facilities/support provided. Some local education authorities had set rates specific to each institution and this had been the initial approach in Wirral during the first year of transition to the new funding system in 2013/14.

Councillor Smith then referred to the proposed banded system of top ups (funding for particular types of need was the same within bands across the authority) that had been developed by Wirral Schools Forum's SEN Finance Steering Group and referred to the details that had been included in the Cabinet report.

Councillor Smith told the Committee that a drop in pupil numbers, the change in funding and future financial projections were the reasons for the consultation on the closure of the Lyndale School. The proposal had not been informed by the quality of the teaching or the care provided at the School which was outstanding. He was very aware that the School was highly regarded.

Councillor Smith informed that he was aware that the proposal to consult on closure was distressing for the parents involved. He informed that all views would be taken into account. Some new options may emerge and those thought previously as not viable would be revisited. Councillor Smith's view was that the proposed consultation was a clear step in obtaining greater certainty over the School's future.

## **Evidence from Call-In Witnesses**

### **Zoe Anderson (Parent)**

Ms Anderson informed the Committee that her daughter Lily, who was 8½ years old, had been a pupil at Lyndale School since she was 2½. Ms Anderson informed the Committee of Lily's medical history, extensive health issues and associated problems. Ms Anderson told the Committee that Lily's

condition was very complex, she was extremely vulnerable and the fact that she managed to attend school was miraculous.

Ms Anderson informed that the Lyndale School was a place she could send her daughter in the knowledge that she would be safe. Lily was unique in her own problems but not unique in Lyndale School where all the children were extremely vulnerable. Ms Anderson considered that the local education authority had legal and moral obligations to maintain the standard set by the Lyndale School no matter what the cost may be. The School was very important in the lives of its 23 pupils.

Ms Anderson informed that she had been asked to consider two schools that Lily could attend and both were full. She had been told that the Council would create a school within a school. She expressed her fears and concerns over the decision the Cabinet had made to look at the possibility of closing the Lyndale School and at the way the process had been carried out. She told Members that she had lost faith in the process and did not feel confident that her daughter would be safe in any other school.

Members then asked Ms Anderson some questions which she answered as appropriate. It was noted that Ms Anderson was concerned that questions that had been put to the Director of Children's Services on a number of occasions had not been answered. If they were to be, then her faith in the process would be restored. It was also noted that Ms Anderson had visited other schools, was concerned over the lack of space and considered that the safety and inclusion provided by the Lyndale School could not be provided elsewhere, even if the teaching staff at Lyndale School were transferred there.

### **Rochelle Smith (Parent)**

Ms Smith informed the Committee that her daughter Madeleine was a pupil at the Lyndale School. Madeleine was a complex child and the School met her medical needs and those of the most vulnerable children on the Wirral, providing a calm, safe and secure environment where they could learn.

Ms Smith also informed that she had been made aware, by a Health official that the Lyndale School may close, in view of its pupil numbers, before her daughter had started at the School.

Ms Smith had not been offered the Lyndale School by the local education authority. She had written to the Deputy Director CYPD and Assistant Chief Executive and received an email response back from an officer from his Department, in April 2012, that had informed that there were no plans to close the Lyndale School. Then just before Madeleine started school Ms Smith had learnt of the decision to consult on closure from a local newsletter. She had been determined that her daughter would attend a school that could meet her needs and had made her view clear, that she wanted the Lyndale School.

Ms Smith told the Committee that she had no faith in the process. Rumours had been circulating for years that the School would close. This had discouraged prospective parents. She felt that the Lyndale School had not been offered to her and other prospective parents as an option because of the uncertainty that had surrounded the School for a long time. Ms Smith considered that this had caused the numbers on roll to drop even further.

Members then asked Ms Smith some questions which she answered as appropriate. It was noted that Ms Smith did not believe her daughter's needs could be met in another school and that the Lyndale School was named on her Statement of Special Educational Needs. Ms Smith liked the School's layout. It was open plan, light and there was room for manoeuvre. Pupils could go into each other's class rooms and had access to all of the School and this was not available in other schools.

### **Emma Howlett (Parent)**

Ms Howlett informed that her son Anthony had been a pupil at the Lyndale School for five terms. Sadly, he had died 9½ years ago. She informed that Anthony had gone to a main stream nursery school but had been diagnosed with Battens Disease when he was 4 years old.

Anthony had gone through the statementing process and had attended the Lyndale School after spending one term at another special school. At Lyndale Anthony had been included in every activity it had to offer which was in marked contrast to the other two schools. He had not been allowed to take part at nursery school because it had been unable to cope with his needs. (Anthony had needed 1 to 1 attention.) At the Lyndale School Anthony had received the medical support he needed. Ms Howlett told the Committee that without the Lyndale School her son would not have enjoyed the life experiences that he had.

Members then asked Ms Howlett some questions which she answered as appropriate. It was noted that Ms Howlett had not been offered the Lyndale School by the local education authority even though she lived close by and she considered that the uncertainty over the School's future had led to the decline in the number of pupils attending it. The School had coped with her son's regular seizures and had not called Ms Howlett in each time as his first special school had done.

### **Faye Starr and Nikki Kenny (Teaching Assistants)**

Ms Starr and Ms Kenny spoke to the Committee about their experiences at the Lyndale School and shared a typical school day with Members. Members were informed of how the children were got ready for lessons after their journeys to school, the teaching methods used at the School, what happened at lunch time and the support given by the staff. Consequently, the Committee

was left in no doubt over the Lyndale School's professionalism, standards, and the level of care it provided and the enthusiasm of its staff.

Members then asked Ms Starr and Ms Kenny some questions which she answered as appropriate. It was noted that the School had held a staff meeting with the Director of Children's Services. The eight alternative options for the Lyndale School had been considered and it had been agreed that option 2 (2-19 School) was the most viable. They were passionate about the School building, its aims and its ethics. They were unsure whether these could be fulfilled elsewhere. The children had full freedom of all of the School. The staff's main concern was the children. If what they needed could be provided elsewhere they would support it. The children were the priority.

There then followed a short adjournment.

When the meeting reconvened it was without Councillor D Realey who was feeling unwell.

### **Evidence from Cabinet Member's Witness**

#### **Julia Hassall, Director of Children's Services, David Armstrong, Head of Service CYPD and Andrew Roberts, Senior Manager School Funding and Resources**

The Director of Children's Services provided the Committee with the background and thought processes which had led to the Cabinet making its decisions on 16 January 2014 to consult on the closure of the Lyndale School. She told Members that she appreciated what the parents and staff called as witnesses had said and the outcomes for the children were an absolute priority.

The Director informed that her report to the Cabinet on 16 January 2014 had sought approval to consult on the closure of the Lyndale School. Closure was being considered because the School's viability had been compromised by falling rolls, the size of the School and therefore, larger unit costs. The care provided at the Lyndale School was good and many aspects of the School were considered to be outstanding. However, there were 23 pupils in the School against a planned admission number of 40.

There had been reforms to the funding of high needs SEN places in special schools and the national formula had changed. Also, the new banded system of top-ups was being applied. This did not assist the School's viability.

Should a decision be taken eventually to close the Lyndale School then the proposal would be to expand the numbers of places at Elleray Park and Stanley Schools to provide up to 230 places, with children with CLD and PMLD being educated and cared for on the same school sites, whilst

recognising the individual needs of each child. This would require careful planning and would change the nature of these Schools.

The Director' view was that the closure of the Lyndale School appeared to be the most viable out of the eight options that had been put forward. However, she expected each option to be reconsidered again and any other options that were put forward that officers had not thought of would also be given serious consideration.

The Cabinet report included the next steps to be taken if it was agreed to consult on the closure of the Lyndale School. There would be a twelve weeks consultation process. There would be consultation meetings with parents, staff, governors and interested people and drop-in sessions would be arranged. The Council would do all that it could to establish the best possible option.

The Director told the Committee that she was aware that a school closure was difficult and distressing. The children's needs must be at the centre of the concerns and the provision made for them in the future must be as good as or better than that which the children had now.

Members then asked the Officers a number of questions which they answered as appropriate. It was noted that:

- The Schools staffing establishment had reduced two years ago when the funding for places had reduced from 45 to 40.
- There was ongoing discussion with the School on how to deal with budgetary issues.
- The proposed consultation on closure would follow a statutory process. It would be full, genuine and open. The outcome was not predetermined. Other options may emerge during the process and if so they would be taken into consideration.
- Funding arrangements for special schools had been streamlined bringing them into line with the funding arrangements for primary and secondary schools.
- The Council funded 40 places at the Lyndale School but there were only 23 pupils on roll. It was questionable whether this was sustainable and from next year Education Funding Agency approval would have to be sought on it.
- The Officers did not think the School's position was sustainable in the longer term, there were lots of empty places so to do nothing was not an option and the changing national picture was taking away some of the freedoms the local education authority had.
- If the local education authority did nothing, the uncertainty would carry on. The funding was based on 40 school places. The authority was reliant on funding empty places to keep the School going. There was no easy answer here.

- Over the last ten years pupil numbers at the Lyndale School had almost halved whilst those at Elleray Park had almost doubled. Both Schools took children with CLD and PMLD. The Director had looked at this, discussed it with her colleagues, researched the Statementing process, examined the Schools' Admission Booklets and had come to the view that the numbers currently on roll at each of the two Schools was the result of parental choice.
- In all schools the local education authority tried to respond to parental preference as it was a national policy.
- All schools were included in the local education authority's School Admissions Booklet. If parents informed that they had not received a copy the Director would look into it.
- The Council was only at the stage of deciding whether to consult on closure. Therefore, officers had not carried out any work in relation to disposing of the Lyndale School site.
- If a decision was taken to close the Lyndale School it would be followed by a stepped process. The School could convert to an academy, free school etc. The local education authority would explore the possibilities in respect of the building. If there was no School and no use for the site, the authority would have to apply to the Secretary of State for Education to dispose of the School. The presumption was against giving permission. If the School building was disposed of the resulting capital receipt would have to be reinvested into other schools in the authority's ownership. The current debate was about the needs of the children not about the site.
- The outcome of a report in 2009 was that a need to build two new schools had been identified. Stanley had been built and then the funding for the other school had been withdrawn in 2010. This meant that, instead of the other new build the local education authority had to invest in the facilities it already had. Consequently, Elleray Park was being extended. If a decision was made to close the Lyndale School the authority would need places at other schools. However, the work being done at Elleray Park was not dependent on closing the Lyndale School.
- The Head of Services CYPD and Assistant Chief Executive had received a communication from a parent querying the possible closure of the Lyndale School in April 2012. Subsequently, he had asked one of his officers to establish whether there was any evidence of the local education authority's staff directing prospective parents away from the Lyndale School. There had not been any but it has been noted, earlier in the meeting, that some Health officials had been doing this.
- Parents lacked confidence in the consultation process. The Director of Children's Services was committed to talking to the parents of each pupil at the Lyndale School and to the staff in order to ensure that she had an up to date assessment of the needs of each child. When she applied the test she would bring it back to the first principle, that she had got it right for the very vulnerable children.

- The Director of Children's Services had met parents on 9 December 2013 and had some detailed questions put to her. She had canvassed views to provide accurate replies to each question. The Director had responded to Mrs Hughes' Freedom of Information enquiry and she thought that her response would have been circulated to other parents. She undertook to circulate her response to the other parents the following day.
- The Director of Children's Services had already been in indirect contact with Doctor Steiger and she intended to meet with health professionals, to take soundings, if the consultation went ahead. She would emphasise how Health officials conduct could undermine parental confidence in the consultation process on the closure of the Lyndale School.
- The Director of Children's Service considered that the rumours that had circulated, for a number of years, that the Lyndale School was going to close may have had some impact on its roll and the need to consult on its closure now. Also, she accepted that the consultation itself may put some parents off but a decision had to be made on how to proceed.
- If the Lyndale School did close, the schools the pupils transferred to would have to change in nature to make the setting right for them.
- If the answers the Director of Children's Services had provided so far did not satisfy parents she would speak to them to ensure that she understood their concerns so that her responses properly addressed them.
- To put more funding into the Lyndale School, the Schools Forum would have to agree to alter the banding and it would mean less funding for other schools. The Schools budget was ring fenced and the local education authority put funding in for maintenance and Private Finance Initiatives. In line with other authorities, next year, the Council would not be putting money in and would have to reallocate funding through a different formula.
- The Cabinet, at its meeting on 12 January 2012 had received eleven recommendations from the University of Chester who had reviewed the authority's provision for children and young people with PMLD. It had approved all of them and agreed that they be implemented as part of Phase 2 of the PMLD review. This had been done. (Cabinet Minute No. 246 refers.)
- Eric Craven – A former HMI had produced a couple of reports. In one he had given consideration to reducing the planned admission number at the Lyndale School from 45 to 40 and looked at how the staffing could be reconfigured to take account of the needs of the children and to ensure that the staff ratio was fit for purpose. In the other he had given consideration to how health support developed and the banding system, particularly Band J. He had come up with an approach to categorise and the majority with that level of vulnerability were at the Lyndale School and some at Elleray Park. Mr Craven had concluded that both Schools could meet the needs of those in Band J.

- The transition of children with PMLD to Secondary School had been looked at in detail 2/3 years ago. There had been a consultation exercise based on a 2-19 school where pupils could stay behind for longer until they were ready to make the transition. Primarily, the Lyndale School had favoured it. However, Foxfield and Meadowside Schools had informed that children did manage to make the transition.
- If Lyndale School did close the transition elsewhere would have to be managed for all the children in the School.

### **Summary of the Lead Call-In Signatory, Councillor Tom Harney**

Councillor Tom Harney thanked the Committee for the questions that had been asked. He informed that the resolution of the Council on 14 February 2011 (Council Minute No. 80(B) refers.) arose out of a petition organised by parents of children who were pupils at the Lyndale School. Councillor Harney considered that the information gathered as a result of it should have been included in the Cabinet's considerations. He queried why it had not been included in the Cabinet report. He also considered that this omission could be a reason why people were not confident in the process.

Councillor Harney informed that children with CLD and PMLD were stimulated by colour whilst those on the autistic spectrum required a more subdued environment. It would be difficult for a school to cater for both types of pupils at the same time.

Councillor Harney was of the view that there was a need to cut away irrelevances and look at what has happened in the Borough over the years. The funding provided for PMLD had never been enough. In the classroom there had not been enough money per child to pay for the adults needed. The formula set had followed negotiations between Head Teachers and School Governors. Councillor Harney considered that there was a cross subsidy and the local education authority had a responsibility to spell it out to the Schools Forum. Funding drove the system.

Councillor Harney told the Committee that it needed to listen to the reality of the daily lives of the children at the Lyndale School. It should query how much per child things cost and where does the money come from. This was about Members understanding the children, understanding their needs and finding a way to pay for it. The local education authority should look at what was the best means to educate these children.

The Committee then questioned Councillor Harney and it was noted that:

- The Committee had to decide if consultation on closure was a reasonable route to take.
- There were concerns over the process because the Cabinet report was considered to have been inadequate. It had been based on finance

and was considered not to be comprehensive enough as it had not covered all of the issues.

- All of the evidence presented would influence the production of the consultation document.

### **Summary of the Cabinet Member, Councillor Tony Smith**

Councillor Tony Smith informed that he was grateful to the people who had attended the meeting and made a contribution to it. He was aware that this was a difficult period for the Lyndale School and those whose children were pupils. He hoped that people's questions had been answered and that important information had been received.

Councillor Smith reported that when he had become the Cabinet Member for Children and Family Services in June 2014 he had noted the amount of work that had been carried out in respect of special schools. He had also noted the uncertainties that had existed around the Lyndale School. The three primary schools were outstanding with wonderful staff and parents. Councillor Smith was very supportive of them and he knew that all Members felt the same way. He also informed that in the last few years a new special school had been built and Foxfield was to transfer to a new building soon.

Councillor Smith reported that the local education authority published School Admission Booklets which set out all the schools available in its administrative area. Parents were welcome to visit the schools and speak to the Head Teachers. He did not think that any of the officers had directed parents to any particular school and he did not know why the pupil numbers at the Lyndale School remained so low whilst the numbers at the other two special primary schools had increased rapidly.

Councillor Smith proposed a thorough, open and transparent consultation on the closure of the Lyndale School to alleviate the uncertainties that had existed for at least the last six years. He understood the emotional side and how it was difficult to move from something people knew so well. Councillor Smith wanted Officers to look at all of the options available and any others that were put forward. He wanted to go out to full consultation so that whatever the findings, the local education authority could get it right this time.

The Committee then questioned Councillor Smith and it was noted that:

- The years of uncertainty over the School's future will have influenced parents as they would have been worried about their children having to make a transition elsewhere at some stage.
- It was important to consult and engage those people who worked in the National Health Service.
- Wirral had more special schools than other local education authorities.
- Special Educational Needs provision needed to be kept under review and some SEN could be met in main stream schools.

- The Cabinet Member wanted to ensure that the local education authority had enough places in appropriate establishments for children with PMLD.
- The Cabinet Member wanted to consult all stakeholders on what was best for children with PMLD.

Having heard all of the evidence, the Chair asked the Head of Legal and Member Services if he thought that there were any grounds for a legal challenge.

The Head of Legal and Member Services responded that he was not aware of any particular issues.

The Chair then referred to the three options available to the Committee and sought Members views.

A Member asked whether the Committee should agree to start the consultation process. She reminded Members that parents, called as witnesses, had made it clear that they had little faith in the process. Her view was that Officers would have to seriously address this but that it was a starting point. There were already eight options available to consult on.

Another Member's view was that the 'to do nothing' option was not valid. He considered that the Lyndale School in a thorough and detailed way. He considered that there were some omissions and he wanted to see a consultation document that set out the costs and implications of each of the options.

A Member considered that what the Committee's decision on this matter would be relevant to any future decision-making.

A Member was concerned about what the parents had said about the Lyndale School not being offered to them. This was very worrying as it tied in with the School's falling school numbers.

Another Member referred to the School Admissions Booklet published by the local education authority. Details of the Lyndale School were included in it and he hoped that that provided reassurance.

Having carefully considered the options that were open to the Committee, it was moved by the Councillor P Glasman and seconded by Councillor M McLaughlin

"That the Committee upholds the Cabinet's decision to go out to consultation on the closure of the Lyndale School."

Councillor L Fraser proposed the following amendment which was seconded by Councillor A Hodson:

“That the Council complete the review on the best ways to educate, support, care and best provision for children and young people with PMLD in Wirral, even if that means keeping the Lyndale School open, with the parents of those children being fully involved with the planning and writing of this review.”

A vote was then taken on the amendment as follows:

For the amendment (6) Councillors W Clements, D Elderton, L Fraser, A Hodson and A Sykes and Ms Nicola Smith (Parent Governor representative).

Against the amendment (9) Councillors A Brighthouse, P Doughty, S Foulkes, P Glasman, M McLaughlin, B Moonie, D Roberts, J Salter and J Stapleton.

The amendment was therefore lost (6:9)

A vote was then taken on the motion as follows:

For the motion (9) Councillors A Brighthouse, P Doughty, S Foulkes, P Glasman, M McLaughlin, B Moonie, D Roberts, J Salter and J Stapleton.

Against the motion (6) Councillors W Clements, D Elderton, L Fraser, A Hodson and A Sykes and Ms Nicola Smith (Parent Governor representative).

The motion was therefore carried (9:6)

**RESOLVED: (9:6)**

**That the Committee upholds the Cabinet’s decision to go out to consultation on the closure of the Lyndale School.**

The Chair then drew the Committee’s attention to the final two paragraphs of the Call-in Procedure:

In the event of any political group not agreeing with the majority decision of the Coordinating Committee, it may prepare a written minority report for consideration by Council when the minutes of the Coordinating Committee are considered. Any such report must be handed to the Head of Legal and Democratic Services in accordance with Standing Order 7(2).

The Leader of the relevant group or his/her representative will have an opportunity to explain the minority report to the Council and Council and Council may discuss and vote for/or against such a report without prejudice to any decision already implemented.

## **CALL-IN OF A DELEGATED DECISION - CABINET MINUTE NO. 140 - PROPOSALS FOR CHANGES TO SCHOOL TOP UP PAYMENTS FOR STUDENTS WITH HIGH NEEDS**

In accordance with the procedure previously agreed by the Committee, the Chair referred to the decision of the Cabinet made at its meeting on 16 January 2014 to agree:

“That the recommendations of the Schools Forum in Appendix 1 to the report be approved with the following amendments and additions:

- Notional SEN costs (LCHI) are funded from Schools Contingency (new addition).
- The costs arising from a High Needs MFG is funded from an SEN under spend in 2013-14 (addition to final recommendation).
- The Special Schools Contingency is used to support specialist provision facing financial difficulties (amendment to the second sentence of recommendation 3).”

(Cabinet Minute No. 140 refers.)

The decision had been called-in by Councillors T Harney, P Gilchrist, J Green, I Lewis, C Povall and P Williams, on the following grounds that:

The banding proposals (para 2.7) are not based on a clear costing of the needs of the children. In particular, the needs of the children with profound and multiple learning difficulties should be quantified.

There is a clear need for one to one in terms of adult presence for many of the children. There is also a need for teaching and other staff. These are in addition to the running costs of the school.

In the case of the Lyndale, the funding proposals will result in the closure of the school. This has not been made clear in the paper.

We would like to seek assurance that the required contingency funding is in place to top up the special educational funding required for the best care and education to be provided for all children.

The Committee was invited to consider the decision that had been made and determine, in the light of evidence to be presented, the most appropriate course of action. The Committee had no power to overturn a Cabinet decision, or to substitute its own decision in place of the original. The options open to the Committee were:

- to take no further action, in which case the original decision shall take immediate effect and may be implemented;

- to refer the decision back to the Cabinet Member for reconsideration, setting out in writing the nature of the Committee's concerns;
- to refer the matter to the Council, if the Committee believes that the decision was outside the policy framework or contrary to or not wholly in accordance with the budget.

### **Explanation of the Call-In by the Lead Signatory, Councillor Tom Harney**

Councillor Tom Harney provided a brief rationale for the call-in of the Cabinet's decision. He informed that a decision had been made about funding which meant that the Lyndale School had to close as there is insufficient money per child to educate children in the School. Councillor Harney considered that insufficient information had been provided for a rational person to make a rational decision.

The Head of Legal and Member services informed that the Cabinet had made its decision on the basis that it had considered that it had sufficient information to make it. The Committee could now test this and satisfy itself that an informed decision was made.

### **Explanation of the Decision Taken by the Cabinet – Councillor Tony Smith – Cabinet Member – Children and Family Services**

Councillor Tony Smith informed that high needs top up payments were complex with 24 separate recommendations. Changes had been introduced in respect of funding high needs by the Department for Education. There had been an initial report to the Cabinet in 2012 which had been agreed. There had been a reduction in the planned admission number from 45 to 40 at the Lyndale School in 2012/13. It was now likely that a banding system would be needed.

The report presented to the Cabinet on 16 January 2014 recommended revised funding arrangements for SEN Top-Ups in maintained Primary, Secondary, Special and Academy Schools. In addition revised place numbers were recommended in some specialist school and base provision.

The proposals had been developed through a working group of the Schools Forum and were advised by a series of meetings with special schools, SEN resourced provision, alternative provision and colleagues from other authorities of the Merseyside Learn Together Partnership. There had been an extended consultation with schools and providers (3 July to 18 October). The report had been discussed with and was approved by the Schools Forum at its meeting on 13 November.

Basically, the report had dealt with the banding model and informed how top ups would be made. The Committee noted that the minimum funding

guarantee was now more affordable, therefore the application for an exemption from this requirement had been withdrawn.

### **Evidence from Call-In Witness**

#### **Ian Harrison, Vice Chair of the Governors and Chair of the Finance Committee**

Mr Harrison informed that the Lyndale School now had a surplus forecast for 2013/14. It was going to get the minimum funding guarantee. There would be a small surplus in 2014/15. Savings would continue, approximately £70,000 in future years.

Mr Harrison also informed that the number of school places had to be agreed with the Education Funding Agency. The Governors of the Lyndale School considered that 28 places would be appropriate. The top up regime had changed. Each place was allocated £10,000, as per the national agreement. Locally top up funding was put in to allow for the needs of the pupils. The top up for Band 5 was £16,000. The governors considered that the top up should be £27,500 per pupil to ensure adequate cover for their needs.

Mr Harrison reported that the governors considered that it was imperative that children were educated in a safe environment. The proposals did not allow for this. Ellera Park was expanding to cater for the numbers it currently had on roll. The current proposals would be detrimental to the staff whose experience had been built up over the last few years.

Mr Harrison told the Committee that the Lyndale School had put forward a proposal that if implemented would reduce its non teaching staff costs from May 2014.

Members then asked Mr Harrison some questions which he answered as appropriate. It was noted that:

- The Cabinet had received an early estimate rather than one at the end of the period when it would have been more realistic.
- The ratio of staff to pupils at the Lyndale School had reduced in 2012 as a result of an independent survey conducted by Eric Craven.
- None of the special schools agreed with the formula that had been approved.
- The £16,000 per year for all schools had not been suitable because of the types of needs pupils assessed in Band 5 had.
- The Lyndale School considered that £27,500 per year was more realistic to educate its pupils and it wanted £37,500 altogether.

## **Evidence from Cabinet Member's Witness**

**Julia Hassall, Director of Children's Services, David Armstrong, Head of Service CYPD and Assistant Chief Executive and Andrew Roberts, Senior Manager School Funding and Resources**

Andrew Roberts, Senior Manager School Funding and Resources informed the Committee of the budget for special schools, the national changes in funding formula and the changes to introduce a banding system which followed Department for Education guidance.

Mr Roberts informed that the 2013 consultation exercise had been fairly extensive and had gone out to all schools. The general view was that the proposals were reasonable starting point but there would be a need to review and develop further.

The major issues identified and taken into account in consultation with specialist SEN providers was the need for any banded approach to:

- Ensure stability of budgets by minimising as much as possible any disturbance to current levels of funding.
- Take account of possible fluctuations to funding because of part year occupancy of places and the interest of the authority to have places available.
- Not to be too simplistic. Very early suggestions around banding looked at the possibility of just 3 bands – low, medium and high.
- Recognise the needs of a growing number of pupils with social communication needs with relatively stronger funding than has been the case to date.
- Recognise the resource intensive nature of making provision for those with the most profound and multiple difficulties.
- Honour existing commitments.
- Take account of the fact that there was limited scope to redistribute monies without additional funding for pupils already in the system.

Members then asked Mr Roberts some questions which he answered as appropriate. It was noted that:

- The Schools Forum had received the same report that was presented to the Cabinet and because of its representative nature was aware of all of the issues when it made its recommendations.
- If there were any savings if the Lyndale School closed they would be redistributed because wherever children went funding followed.
- The Lyndale School said it needed £37,500 per year for each child but had only been offered £26,000. Other schools had been content for the Lyndale School to be funded from empty places.
- There was a £900,000 contingency fund within the budget.

- The changes proposed were for a two year period April 2014-16 and would be kept under review with regular reports to the Schools Forum.
- The banding structure also applied to independent placements.

### **Summary of the Lead Call-In Signatory, Councillor Tom Harney**

Councillor Tom Harney reported that the Lyndale School's numbers had changed as had the funding formula over the years. In a school most of its funding went on its staffing. There were different means of controlling expenditure and he would like to see what the daily life of the child was like and how much it cost. It was time to take a radical look at what was happening.

Councillor Harney told the Committee that the Lyndale School was unique in this country for a maintained school. Research was required. What was the children's' and parents' experiences? What was best? Objective advice was needed.

Councillor Harney was asked whether he took comfort from the fact that Officers had had the foresight to put to put contingencies in the budget. His response was that research was required so that the facts could be established to make an informed decision. The cost, the real cost of being safe and comfortable needed to be identified.

### **Summary of the Cabinet Member, Councillor Tony Smith**

Councillor Tony Smith informed that the technical details had been explored by Officers who had a better understanding of how the formula worked. All Head Teachers considered their schools to be special. This was a new situation with a national formula that the local education authority had to operate.

A Member asked that when the local education authority did consult would Officers make sure that a realistic estimate of what the alternatives were was included.

Another Member informed that the budget was adequate with contingency fund and that the detailed Minutes from this meeting would be referred back to those who were making the decision.

Having carefully considered the options that were open to the Committee, it was moved by the Councillor B Mooney and seconded by Councillor P Doughty

"That the Committee upholds the Cabinet's decision and it be ensured that consultation is meaningful, informed and transparent."

Councillor A Sykes proposed the following amendment which was seconded by Councillor W Clements:

“We would like to seek assurance that the required contingency funding is in place to top up the special educational funding to ensure that the level of funding required for the best care and education is provided for all children.”

A vote was then taken on the amendment as follows:

For the amendment (7) Councillors A Brighthouse, W Clements, D Elderton, L Fraser, A Hodson and A Sykes and Ms Nicola Smith (Parent Governor representative).

Against the amendment (8) P Doughty, S Foulkes, P Glasman, M McLaughlin, B Moonie, D Roberts, J Salter and J Stapleton.

The amendment was therefore lost (7:8)

A vote was then taken on the motion as follows:

For the motion (8) Councillors P Doughty, S Foulkes, P Glasman, M McLaughlin, B Moonie, D Roberts, J Salter and J Stapleton.

Against the motion (7) Councillors A Brighthouse, W Clements, D Elderton, L Fraser, A Hodson and A Sykes and Ms Nicola Smith (Parent Governor representative).

The motion was therefore carried (8:7)

**RESOLVED:**

**That the Committee upholds the Cabinet’s decision and it be ensured that consultation is meaningful, informed and transparent**