

## WIRRAL COUNCIL

CABINET – 28<sup>th</sup> MAY 2009

### REPORT OF DIRECTOR OF CHILDREN'S SERVICES

#### **OUTCOME OF FURTHER CONSULTATION ON THE ESTABLISHMENT OF A CHURCH OF ENGLAND CONTROLLED PRIMARY SCHOOL IN EASTHAM**

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##### **EXECUTIVE SUMMARY**

The 2005/2006 Primary Places Review of options for change in primary schools in Eastham resulted in the Adjudicator's decision to approve the closure of St Mary's CE (Controlled) Primary School from 31<sup>st</sup> August 2007. This followed the school's placement in Special Measures by Ofsted in September 2006. At its meeting of 16th March 2006 and re-iterated on 14th December 2006, Cabinet agreed to support the Diocese of Chester if a proposal was received in order to establish a CE Controlled primary school in the Eastham area in replacement for a Community primary school. Discussions have taken place between the governing body of Millfields Primary School, the Diocese and the Local Authority on this subject, resulting in a further consultation on this option. The outcome of the consultation is reported to Cabinet, with a recommendation to approve the publication of statutory notices in relation to this proposal.

##### **1.0 Background**

- 1.1 The Council has been reviewing Wirral primary school provision on an area by area basis since Autumn 2004. The review of the Bromborough and Eastham small planning area, in which Millfields Primary School is situated, began in October 2005 with pre-consultation meetings involving headteachers and chairs of governors of all the schools in the area, as well as Diocesan Authorities and ward members. A number of options for change arose, and were approved for formal consultation by Cabinet. Leaflets and comments forms were provided to all parents, and at schools and local libraries. A dedicated website was established, including a feedback form, and the consultation was advertised in the press. Public meetings were held during Spring term 2006 at each of the schools named in the options.
- 1.2 The outcome of this consultation was described in the 16th March 2006 report to Cabinet (Sections 6 and 7). At this time, Cabinet's decision was that an option that arose from the consultation, namely the closure of St Mary's CE Primary School and Millfields Primary School combined with the establishment of a CE Controlled primary school at the Millfields site, should proceed as a statutory proposal. The Cabinet report and minute are attached as Appendix A.
- 1.3 Following legal advice, it was decided that consultation should be continued to allow consultees to express their opinions about the new option, led by the Diocese of Chester and facilitated by the Authority. Further consultation meetings were held for stakeholders of the two schools. The outcome of the additional consultation period which concluded on 6<sup>th</sup> July 2006, was reported to Cabinet on 27<sup>th</sup> July 2006. The Diocesan Board of Education were impressed by various aspects of Millfields Primary School, including the Christian ethos and existing links with local churches and "*would be delighted to have Millfields as a part of its family of Church schools*". However, the Diocesan Board of Education felt unable to support the closure of St Mary's CE Primary School, and therefore rejected the Council's preferred option to close the two schools and open a new Church of England school on the Millfields site. One of the factors the

Diocesan Board gave as a reason not to support the amalgamation was that the standards achieved by the two schools were “not significantly different”. The Council’s preferred option of amalgamating the two schools in order to create a new school could not therefore proceed. At its meeting of 27<sup>th</sup> July 2006, the Council decided not to press ahead with the proposal to close St Mary’s CE Primary School, deciding instead to make an interim measure to reduce surplus places and enhance provision in the area by locating a Children’s Centre at Millfields Primary School. A further recommendation was made that the Bromborough and Eastham area should be monitored and reviewed again during the Primary Places Review. The Cabinet report and minute are attached as Appendix B.

- 1.4 St Mary’s CE (Controlled) Primary School was inspected by Ofsted on the 13<sup>th</sup> and 14<sup>th</sup> September 2006, and was placed in the Ofsted category of Special Measures. This was reported to Cabinet on 14<sup>th</sup> December 2006. At this meeting, Cabinet’s decision was to proceed to statutory notices in respect of the closure of St Mary’s CE (Controlled) Primary School. As a further recommendation, Cabinet agreed to give all necessary support to any proposal made by the Church of England Diocese of Chester regarding the closure of a Community Primary School in order to open a new CE Primary school on the same site, subject to the agreement of the relevant Governing Body. The report and minute are attached as Appendix C.
- 1.5 The statutory notices were published on 10<sup>th</sup> January 2007, followed by a representation period for comments and objections. The proposal for closure of St Mary’s CE Primary School was considered by the School Organisation Committee (SOC; now abolished) on 21<sup>st</sup> March 2007. A unanimous decision could not be reached. The proposal was consequently referred to the Office of the Schools Adjudicator according to guidance.
- 1.6 The Adjudicator held an additional consultation on the closure of St Mary’s CE Primary School ending on 9<sup>th</sup> May 2007, including a further meeting for stakeholders of St Mary’s CE Primary School on 2<sup>nd</sup> May 2007. The Adjudicator’s final decision was to approve the closure of St Mary’s CE Primary School from 31<sup>st</sup> August 2007.
- 1.7 Cabinet’s decision on 14<sup>th</sup> December 2006 regarding support for the possible establishment of a CE Controlled primary school in the Eastham area remains in place. Discussions on the possibility of Millfields Primary School becoming a CE Controlled Primary School have been ongoing through 2007/2008, including the governing body of Millfields Primary School, the Diocese of Chester and the Local Authority. All three parties agreed that the option had been positively received during the original consultation. As demonstrated above, there has already been extensive consultation on this option in the Eastham area over an extended period of time. However, as it has been more than 12 months since the conclusion of the last consultation in May 2007, guidance states that a fresh consultation should be carried out in order to allow stakeholders who were not consulted in the original consultation an opportunity to express their views.
- 1.8 Accordingly, a further consultation was held during February and March 2009. The outcome of this consultation is the subject of this report.

## 2.0 Consultation method

- 2.1 A consultation leaflet was drawn up jointly by the Diocese of Chester and the Local Authority and distributed to staff and parents/carers of pupils at Millfields Primary School and other Eastham primary schools. The document was also made available via a dedicated website and at local libraries and community centres and one stop shops. The leaflet is attached as Appendix D.
- 2.2 A consultation meeting for interested stakeholders was held on 4<sup>th</sup> March 2009 at Millfields Primary School, chaired by Mr Jeff Turnbull, Diocesan Director of Education from the Diocese of Chester. The date for the meeting was in the parents’ leaflets and

on the specific web-site and a general notice was published in the local press. Opportunities were provided for various means of written response via post and e-mail.

### **3.0 Outcome of the Consultation**

3.1 The consultation closed on 20<sup>th</sup> March 2009. During this period, 7 responses from individuals and one petition were received. Three responses were from current parents, one from a former parent and one from a member of staff. The remaining two responses, and the petition, were from other concerned persons. The anonymised responses are attached as Appendix E.

3.2 The consultation meeting on 4<sup>th</sup> March 2009 was attended by 35 persons, including two ward councillors, 9 parents, 17 staff members and 7 governors (some also parents or staff). The minutes of the meeting are attached as Appendix F.

3.3 The points raised by consultees are summarized as follows:

- Impact of Church of England status on the school
- Importance of retention of a primary school at the Millfields site
- Financial implications
- Concerns about future of staff, especially headteacher
- Concerns about future of existing governors
- Questions about nature of collective worship and involvement with local churches
- Uniforms and name of new school
- St Mary's closure process and diversity of choice
- Concerns about competition process

3.4 The Diocese of Chester's comment on the consultation is attached as Appendix G, and a statement from the Governing body of Millfields Primary School is attached as Appendix H. Both express support for the proposed change.

### **4.0 Commentary on the points raised**

#### **4.1 Church of England status**

Understandably, there was some debate about the difference between CE and Community schools, and what potential benefits a change to faith ethos could bring.

Church of England Controlled schools differ from Community schools because they have a Church of England ethos and collective worship. In all other respects, including staff employment, admissions, funding, following the National Curriculum, provision for special needs and Ofsted inspections, they are the same as Community primary schools. Controlled schools serve their local community, regardless of background or faith, just as in Community schools. In a Controlled school, the Church appoints some of the governors. As in Community schools, parents can choose to opt out of participation in collective worship if they decide to do so. There is an additional inspection of religious ethos for faith schools, on top of the Ofsted inspection which applies to all schools.

The Anglican Diocese of Chester says, "Church schools pride themselves in providing an education for the whole child in a Christian environment. They seek to ensure that all children and young people achieve the best of which they are capable in a caring atmosphere that recognises the special gifts of each individual. The spiritual, moral, social and cultural development of all is fostered within a Christian environment. Moral teaching is based firmly within the teaching of the Bible. They enable children and their families to explore the truths of Christian faith, to develop spiritually and morally, and to

have a basis for choice about Christian commitment. They are places where the beliefs and practices of other faiths will be respected”.

The Diocese of Chester’s position, supported by the majority of respondents, is that Church of England status can provide additional support to enhance the excellent work already carried out by the school, especially in terms of pastoral care.

#### 4.2 Retention of the school

Respondents not directly connected to the school expressed their view that the option would result in the pure closure of Millfields Primary School.

Confusion over the “closure” of Millfields Primary School stems from the wording of the option, which is phrased according to legal guidelines as the closure of Millfields Primary School, linked to the establishment of a Church of England Controlled primary school on the Millfields site.

By law, a school cannot gain, lose or change religious character by simply publishing a “prescribed alteration” notice. In order to become a Church of England Controlled School, the existing school closes, and a new school with a religious character opens immediately on the same site. The Authority would propose the closure of Millfields Primary School, with a linked proposal to establish a new CE (Controlled) School being made by the Diocese of Chester. Linking the two proposals means that either both should be approved, or both rejected as one cannot happen without the other. There is no intention to close Millfields Primary School without immediately establishing a school on the same site.

#### 4.3 Financial Implications

One respondent thought that the option would involve the construction of a new building, which was seen as a waste of money. To be clear, the CE Controlled school would occupy the same buildings as Millfields Primary School with few capital implications, except perhaps for alterations to signage.

There would be no land transferred to the Diocese of Chester. No capital receipt is generated by the option, and there is no financial saving for the Schools Budget or for the Council.

#### 4.4 Staffing implications

The future of existing staff, teaching and non-teaching, formed a significant part of the concerns raised at the consultation meeting. The shadow governing body’s first task is to appoint a head teacher, following which the staffing structure of the school can be appointed. The position with regard to ring-fencing has now been clarified with the Authority’s human resources team. All teaching and non-teaching posts can be ring-fenced to the existing group of staff, although some may choose to move position or retire, as in any school. As the school would be Controlled, not Aided, staff would continue to be employed by the Local Authority.

The 1998 Education Act normally requires all head teacher and assistant/deputy headteacher posts to be advertised nationally. However, 13(7) and 22(7) of the staffing regulations provide scope for maintained schools not to advertise and conduct a selection process for such posts under certain circumstances following school re-organisation, which are:

- The new or merged school is formed from the immediately pre-existing schools.
- For each headteacher or deputy headteacher post available in the new or merged school there is only one person from the pre-existing schools available for continued employment in that role in the new school, and that person’s performance and ability is highly regarded by both the governing body and the LA.
- Any such person so accepted for a headteacher or deputy headteacher post has

suitable qualifications, experience and ability to undertake the role in the new or merged school.

These criteria appear to fit the potential situation if Millfields becomes CE Controlled and therefore the shadow governing body could decide to follow this course of action.

#### 4.5 Governing body implications

The future of existing governors was raised. Currently there are 12 governor positions at Millfields Primary School – three staff (including the headteacher), four parents, two LEA appointed and three community governors (one vacant). The maximum number of governor positions in any school is 20.

The following table shows the difference in composition between Community and Controlled governing bodies. Exact numbers in each category depend on the total size of the Governing body and are rounded up or down to the nearest whole number.

Type of School	Category of governor				
	Parent	Staff	LEA	Community	Foundation/ Partnership
<b>Community</b>	At least one-third	At least two, but no more than one-third, including the headteacher	One-fifth	At least one-fifth	-
<b>Voluntary controlled</b>	At least one-third	At least two but no more than one-third, including the headteacher	At least one, but no more than one-fifth	At least one-tenth	At least two, but no more than one-quarter

The Diocese of Chester's position is that the new governing body would be formed by the majority of the existing governors, with at least two new Foundation governors appointed by the Diocese, raising the total number of governor positions to 14.

Raising the total number of governor positions to 14 (or 15) by the addition of two to three Foundation governors is likely to create one additional Parent Governor post. If there were surplus governors in any category, the governing body themselves would decide which existing governors remained in post.

#### 4.6 Collective worship and local churches

Questions were raised about the nature of collective worship and links with local churches. In all schools, there should be an act of collective worship in which each pupil can participate every day. Until 1988 the law expected collective worship to take place in a whole school assembly at the beginning of every day. But now, it can take place in any group at any time of the day: the whole school, house or year groups, class groups or form assemblies. There is no upper or lower level for the number of pupils involved in each group. Collective worship in a Church of England school must be Christian, rather than "broadly Christian" as in a Community primary school, and can take place on or off school premises, for example in a local Church or other place of worship. Parents can choose to opt out of any or all acts of collective worship, just as in any other school. Staff also have the right to withdraw.

In response to consultees questions about religious education, Voluntary Controlled schools in Wirral teach Religious Education according to the Wirral Agreed Syllabus – the same syllabus used by community schools. All RE syllabuses taught in church schools are multi-faith and require students to learn about major world faiths.

#### 4.7 Uniforms and name of new school

Not all primary schools operate a school uniform policy, and the Authority does not make a grant towards buying primary school clothing. The new governing body may make their own arrangements to assist with purchasing uniforms, bags and so on, or transitional arrangements whereby children can continue to wear their existing uniform until it is replaced in the usual course of events, but this is a decision for the individual governing body to take.

The name of the new school would also be a matter for the new governing body to decide. The Diocese of Chester has indicated that it has no objections to “Millfields CE Primary School” if this is what the governing body decide.

#### 4.8 St Mary’s closure process and diversity of choice

The process in relation to the closure of St Mary’s CE (Controlled) Primary School has been summarized in section 1.0 above, detailed in supporting papers, and will not be repeated here.

One consultee questioned the rationale behind closing St Mary’s CE Primary School, only to open another CE primary school nearby.

The Adjudicator’s reasons for approving the closure proposal of this school were based on the following statement from the guidance:

*“Where the decision maker is presented with proposals to close schools in special measures or otherwise causing concern, they should start from the presumption that these be approved, subject only to checking that there will be sufficient accessible places of an acceptable standard available in the area to meet foreseeable demand and accommodate the displaced pupils.”*

The Adjudicator found that standards rated by Ofsted at four of the five alternative schools named in the statutory notice were significantly better, and one marginally better, than at St Mary’s and that the closure of St Mary’s would therefore be likely to have a net positive effect on overall standards in the area. There were sufficient places available locally to accommodate all the displaced pupils and meet foreseeable demand. In certain circumstances there can be a presumption against closure of a Church of England or Roman Catholic school, but this was found not to apply in the case of St Mary’s.

The Adjudicator also noted that alternative Church of England primary schools were not unreasonably difficult to reach. However, in terms of diversity of parental preference, the Council’s position has consistently been that there should be a choice of a Church of England ethos primary school in the Eastham area and the consultation option re-establishes this choice for parents.

#### 4.9 Competition process

New regulations introduced in 2007 under the Education and Inspections Act 2006 mean that the establishment of any new primary school is subject to a “competition” where the Authority invites bids to establish the best provider for the new school. The Authority can enter its own proposal into the competition, and in most cases, particularly in primary school competitions, is likely to be the only entrant.

In this case, however, the Local Authority would not enter a bid to compete with that made by the Diocese of Chester. However, other bidders may come forward for consideration, for example a business, college, university or another local school. Council’s Cabinet would be the decision maker in this case, however some concerns were raised during consultation about the potential for an alternative bidder winning the competition and the impact of this on the school. The competition process also includes further consultation and is likely to add at least six months into the process of establishing a new school.

The option does not fall into any of the automatic competition exemption categories. Permission not to hold a competition would therefore need to be sought from the Secretary of State. Guidance therefore indicates consent not to hold a competition would be considered on the following applicable factors:

- Contribution to levels of local diversity
- Urgency for the new school to be in place and the impact of the competition process
- Views of interested parties.

Given the extensive and lengthy consultation that has already taken place around this option, if Cabinet's decision is that the option should move to formal proposals, it is recommended that the Authority and Diocese of Chester would jointly write to the Secretary of State to ask for permission not to hold a competition in order to attempt to reduce the time spent in uncertainty, and to contribute to levels of local diversity by re-establishing a Church of England ethos school in the Eastham area.

The Secretary of State takes about 6 weeks to make the decision. If permission to waive the competition regulations is received, notice publication can then go ahead as soon as possible. Public notices need to stand for a 6 week representation period so that anyone who wants to can make comments and objections. The proposals would then return to Council's Cabinet for a decision to be made.

If permission to waive competition is not received, a further report will be brought to Cabinet detailing the competition process and specification for the new school. The date of establishment of the new school and closure of the existing school would be deferred to August/September 2010.

## **6.0 Financial Implications**

6.1 There are minor capital implications to the proposals if approved, for example in terms of changes to signage, which can be met from the schools own Devolved Formula Capital or from the Primary Places Review element of the capital budget.

## **7.0 Staffing Implications**

7.1 When a school closes, all staff at the school are made redundant. However, under the circumstances in relation to these proposals, all teaching and non-teaching posts can be ring-fenced to the existing group of staff. With the approval of the shadow governing body this can be extended to the headteacher and assistant headteachers under 13(7) and 22(7) of the staffing regulations.

7.2 Should a competition be required, there are likely to be internal staffing implications in terms of time to operate and process the competition in conjunction with consultants appointed by the DCSF.

## **8.0 Equal Opportunities Implications**

8.1 It is essential to plan school provision across the Authority so that it is both efficient and effective in the interests of all pupils.

8.2 Establishment of a Church of England Controlled school at Millfields reinstates parental preference for this kind of primary education in the Eastham area and widens diversity of choice.

## **9.0 Human Rights Implications**

9.1 There are none arising directly from this report.

## **10.0 Local Agenda 21 Statement**

10.1 There are none arising directly from this report.

## **11.0 Community Safety Implications**

11.1 There are none arising directly from this report.

## **12.0 Planning Implications**

12.1 There are none arising directly from this report.

## **13.0 Anti-Poverty Implications**

13.1 The redistribution of funding released by school reorganisation, in combination with the Authority's intention to realign the schools budget to give higher levels of funding to schools with high levels of deprivation, as well as improved accommodation, goes towards raising aspirations and narrowing the attainment gap for vulnerable groups.

## **14.0 Social Inclusion Implications**

14.1 The Children's Centre based at the Millfields Primary site would continue to operate, providing opportunities to promote joint agency work to promote co-ordinated solutions for pupils and their families.

14.2 As a Controlled rather than an Aided school, the school would maintain its existing catchment zone and would continue to serve children and families in the local community. Admissions to Church of England Controlled primary schools are made by the Local Authority. Unlike Aided schools, Controlled schools do not operate any kind of selection on background, faith or church attendance.

## **15.0 Local Member Support Implications**

15.1 Millfields Primary School and the Eastham ward.

## **16.0 Background Papers**

16.1 Previous Cabinet reports

Responses to Consultation.

Statutory guidance on School re-organisation issued by the DCSF.

## **Recommendations**

- 1) That statutory proposals be published in respect of the closure of Millfields Primary School on 31<sup>st</sup> August 2009 and the establishment of a new Church of England Controlled school at the Millfields site from 1<sup>st</sup> September 2009.
- 2) That the Director of Children's Services be authorised to take all necessary steps to publish these proposals, ensure the prescribed procedures are followed, including requesting permissions from the Secretary of State in furtherance of the proposals.
- 3) That if permission to waive a competition is not received from the Secretary of State, a further report be brought to Cabinet detailing the competition process and setting out a specification for the new school.

**Howard Cooper**

**Director of Children's Services**