

## **Committee: Cabinet**

**Date: 19 September 2011**

Agenda item: 4

Wards: Dundonald School and Recreation ground are located in Dundonald Ward

### **Subject: Proposed expansion of Dundonald Primary School and impact on Dundonald Recreation Ground**

Lead officers: Yvette Stanley, Director of Children, Schools and Families and Chris Lee, Director of Environment and Regeneration

Lead members: Councillors Peter Walker (Education) and Andrew Judge (Environmental Sustainability and Regeneration)

Forward Plan reference number: 1074

Contact officers: Tom Procter, Manager of Contracts and School Organisation (Children, Schools and Families Department) and Doug Napier, Leisure and Culture Green Spaces Manager (Environment and Regeneration Department)

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#### **Recommendations:**

- A. Agree that the Council should proceed to the next stage in the proposal to expand Dundonald Primary School, and in view of this officers should undertake the following:
  - B. A pre-planning application consultation on a single layout option design prior to submitting a formal planning application
  - C. To apply to the Upper Tribunal (Lands Chamber) for a modification to the existing restrictive covenant on Dundonald Recreation Ground
  - D. Should C above be agreed, to proceed with the appropriation of the area of land required for the school expansion from Leisure Services to Education for the use of Dundonald School
  - E. Should C above be agreed, to publish a statutory proposal for the permanent expansion of Dundonald School from 210 to 420 places from September 2013
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#### **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. This report concerns the proposed expansion of Dundonald School, which is one of a range of school expansion required across the borough to meet a significant increase in demand for primary school places. Specifically, Cabinet is being asked to agree that officers should undertake processes to progress the scheme further.
- 1.2. The paper reports on the consultation the Council conducted on its proposal to expand Dundonald School and the early design options for its physical expansion. The proposal put to consultation impacts on the adjacent recreation ground as detailed in paragraph 3.3 of the report.
- 1.3. The paper summarises the issues raised in the responses to the consultation, refers to a petition organised by the "Protect Dundonald Rec Campaign Group" and provides the views of Friends of Dundonald Park.

- 1.4. There were three main groupings of stakeholders responding to the consultation – current parents of the school, parents with pre-school children, and other residents including specific interested groups. The consultation showed a balance in the views of current parents at Dundonald School regarding the proposed expansion; a significant majority of parents with pre-school children supporting the council’s proposal, but a significant majority of local residents against the proposal.
- 1.5. The paper also reports on the consultation with regard to design options for the scheme, and the legal considerations
- 1.6. The paper provides advice to Cabinet members to consider their decision in balancing the requirement for primary school places against concerns from residents, by considering three key questions:
- Is there a requirement to expand Dundonald School, or are there any alternatives?
  - If it is a requirement, are there any negative consequences? If so, can these be mitigated and, once this is considered, does the requirement for the scheme override any negative consequences?
  - Is the proposal lawful, and therefore deliverable within reasonable timescales?
- 1.7. The officers conclude their recommendation following the consultation that the proposal is progressed as per the above recommendations.

## 2 STRATEGIC BACKGROUND TO THE COUNCIL’S PROPOSAL

- 2.1. The London Borough of Merton has a legal obligation to provide school places for all the children needing education. There is a significant increase in demand for school places in Merton, with more children entering school age, fuelled by a birth rate that rose by over 30% in the years from 2002 to 2009. The 2010 birth figure for LB Merton published by the Office for National Statistics shows a further rise.
- 2.2. To enable the Council to meet its legal obligation the council has embarked on a substantial primary school expansion programme. The number of additional reception classes provided to date, and forecast based on our “medium” projection is as follows:

Year entering reception	Additional forms of entry (FE)	Schools providing an additional class for the first time
2008/09	3FE	<b>Wimbledon Chase, Holy Trinity and St. Thomas of Canterbury</b>
2009/10	3FE	<b>Benedict, Hollymount and Joseph Hood</b>
2010/11	3FE	Bishop Gilpin* (one year bulge only), <b>Aragon</b> , and Cranmer
2011/12	9FE *	All Saints CE, Gorringer Park, Liberty, St. Marys RC, Singlegate, <b>William Morris</b> , Wimbledon Park, Dundonald, Hillcross, The Priory
2012/13	2FE	To be decided

2013/14	3FE	To be decided
2014/15	2FE	To be decided
25FE		

\* Originally 7FE extra in 2011/12 but 8 new schools as Bishop Gilpin only for 2010/11 reception. Following admissions information two extra were agreed as an emergency measure, including Dundonald School.

**Bold** = Legal process for permanent expansion completed

Garfield school was expanded from academic year 2006/07 and, therefore, is not recorded in the above table

- 2.3. In autumn 2010 the council undertook a consultation on its primary school expansion strategy with proposed schools named. This included the proposal that Dundonald School be expanded from 2012. This strategy, based on the expansion of existing schools, was agreed by Cabinet on 6 December 2010.
- 2.4. Specific criteria for meeting the increase in demand were summarised in the October Cabinet report as follows:
- We will seek to expand successful provision where educational standards are highest and where higher numbers of children can thus benefit from our most effective schools
  - We will seek to expand provision which is popular with parents and demonstrably over-subscribed
  - We will seek to locate additional places as near to the point of additional demand as possible being mindful of travel and transport considerations
  - Faith based schools should make a balanced contribution to the overall diversity of school provision in the borough
  - Planning of new provision should take full account of the needs of children with special educational needs
  - Physical constraints of existing school sites will preclude some from consideration for expansion, notwithstanding the above criteria
  - Where the permanent expansion of schools is needed, this should be achieved through the building of high quality, sustainable, accommodation.
  - Any additional places will need to be provided in ways which ensure good value for money
  - Taking into account the above, we prefer to consider smaller schools (1FE) for expansion before larger schools as increasing the size to at least 2FE supports and promotes sustainability
- 2.5. Dundonald School has been proposed as it meets all the key criteria for expansion. It is a popular and successful school. In its most recent Ofsted inspection (2009), it was rated outstanding. The school has been heavily over subscribed for its 30 places such that children have in recent years needed to reside within approximately 200 to 300 metres from the school to obtain a place. With the overall increase in demand for school places in the Wimbledon area, even with other recent school expansions, there are no longer alternative local schools for residents without further school expansion.
- 2.6. However, Dundonald School is located in the smallest site in the borough albeit that it is a two storey building so has more play space than some other primary schools and it currently benefits from an agreement to use the rec.'s

hard court area during all play and PE times, effectively for the duration of the school day.

- 2.7. The council therefore developed options on how Dundonald School could be expanded. This has included careful consideration of the school's needs, the need to protect park space as much as possible and how, if progressed, the scheme could provide more suitable modern park facilities for local residents.

### **3 THE PROPOSAL PUT TO CONSULTATION FOR DUNDONALD SCHOOL AND THE LEGAL PROCESS**

- 3.1. The council commenced a consultation on 18 May 2011. Due to demand and the capacity of the Dundonald School hall, two public meetings were eventually held and the consultation ended on 11 July 2011. The council consulted on two related matters:

- The principle of expanding Dundonald School to be 2-forms of entry i.e. expand from its current capacity of 210 permanent places (plus nursery) to 420 places
- Early design options for expanding the school and how this could be an opportunity to improve the parks facilities for the future

- 3.2. The consultation's legal requirement was as a statutory consultation under Education Acts and the related government guidance, to decide whether the council should go to the next stage of publishing a statutory proposal for expanding the school. However, it was also intended to be a wider consultation with the public given the impact on the recreation ground should the school expand. Therefore, the consultation was wider than all previous school expansion consultations, with over 4,500 leaflets distributed to local residents in addition to parents of children currently attending the school.

- 3.3. The proposal in relation to the impact on the park was summarised in the consultation leaflet, drawings were put on display in the recreation ground, and two "drop in" sessions were organised to explain the plans, in addition to the two public meetings noted above. The proposals in regard to the impact on the park can be summarised as follows:

- The design proposal is that a two-storey building would replace the current rec.'s pavilion building in a location closer to the current school site. The new facilities would provide similar pavilion facilities to the present, as well as school facilities, in a modern, new building rather than the current pavilion, built approximately 50 years ago and of temporary type construction. The facilities available at all times include a community room (e.g. for the band to use as present), changing rooms and public toilets. In addition there will be school facilities that can be let out to the community including 2 extra halls totalling 230 sq. metres as well as space suitable for the enlarged school. There are 3 options in the consultation, which show the building footprint to be moderately more than the current pavilion (53 to 157 sq metres more).
- The "tennis courts"/hard court games area would be enlarged and would continue, as now, to be part of the rec. and used by the school during their play and PE times and available for general use at all other times.

- The children’s public playground would be just as large as present on all options in the proposed scheme
- Due to the change in arrangements it would be necessary to move the bowling green, and due to the increased hard court games area it would need to be narrower, but the same length and suitable for the Laws of the Sport of Bowls. (However, at this time the council is considering whether it can maintain the bowling green due to its limited use. This is a separate financial decision on running costs, as there is the capital in the proposed school scheme to replace the bowling green or consider alternative use of the space.)
- There is no direct impact proposed on the Rose Garden, though one of the walkways to it is likely to be affected, at least during school hours.
- There is no impact on cricket pitch/football pitch provision
- Due to the need for early years play space it would be necessary for the school to have some extra devoted play space from the rec.

#### **4 RESULTS OF THE CONSULTATION**

4.1. A more detailed summary of the written responses to the consultation and notes of the public meetings is contained in appendices 1 and 2 of this report. Detailed answers to all the questions raised during the consultation process have been published as a “Q and A” on the council’s website. A summary of each individual response to the consultation is also posted on the council’s website.

4.2. The consultation document requested responses in two parts:

1. On the principle of expanding Dundonald School. Respondents were asked to “provide comments on the principle of expanding Dundonald Primary School to 2 forms of entry (60 pupils per year), including any specific concerns you may have that the Local Authority and school could address”. No specific yes/no question was asked as the council wished to encourage detail on concerns and suggestions rather than implying we were holding a referendum.
2. The preferred design out of the three options put to consultation with “any comments and whether there are there any high or low priorities for the scheme or facilities you would like to see in the park as part of the scheme”. Three options (A, B and C) were presented, all of which wrap-around the school’s two-storey annex building.

4.3. There were 386 written responses to the consultation including letters received during the consultation period that were not on the official response form. Respondents were asked to categorise themselves and the breakdown is listed below.

Parents of current pupils at Dundonald	55
Parents with pre-school children	64
Local residents including interested groups/not stated	267
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Total	386

## **Part 1 of consultation – principle of expanding Dundonald School**

- 4.4. The consultation form did not specifically ask a closed questionnaire on whether people supported the principle of expanding Dundonald School or not. However, in analysing the responses officers considered whether the response was generally positive, negative, or neutral/unclear.
- 4.5. Of the three main stakeholder groups summarised above the consultation showed a balance in the views of current parents at Dundonald School, a significant majority of parents with pre-school children supporting the council's proposal, but a significant majority of local residents against the proposal.
- 4.6. Positive comments were as follows:
- Accept the demand for and duty to provide additional places
  - Places are clearly needed "Vitaly necessary". All options are sympathetic to the Rec.
  - Desperate shortage of places in the area - current catchment is too tight
  - In total agreement for local school places
  - The current 'eyesore', shabby and dilapidated pavilion will benefit from being replaced
  - 2FE schools offer more opportunities. Expansions spread across existing good schools is ideal solution
  - Support proposal in the absence of any alternatives
  - Expanding outstanding schools makes sense economically
- 4.7. There were a greater number of objections in total and these generally provided a greater level of detail. The concerns can be separated into the following categories:
- Negative impact on the recreation ground
  - Absence of need to expand Dundonald School as no lack of school places in the local area
  - Absence of need to expand Dundonald School as alternative means to provide the school places
  - Negative impact on Dundonald School including standards and ethos
  - Increased traffic & congestion
- 4.8. There were also comments on potential mitigating factors, an Admissions Priority Area (although the consultation document confirmed that we were not consulting on an "APA" at this stage), criticism of the consultation process, and criticisms of past decisions made by the council/on-going related decisions. Detail of this is in appendix 1
- 4.9. **Negative impact on the recreation ground.** Concern was raised on the general principle of acting in breach the covenant on Dundonald Rec. (see section 5 to this report on legal considerations) and particularly that it would set a dangerous precedent. Concern was raised that the character of the rec. would change. More specifically, concerns were raised regarding the following:

- Impact on footpaths/reduced accessibility to Rose Garden and Holocaust memorial;
- Loss of open space
- Loss of mature trees
- Loss of bowling green (unfair on elderly people)
- The building will harm the appearance and diminish the value of the Rec
- MUGA (hard court “Multi use games area”) will destroy the peaceful ambience of the Rose Garden and lead to more tarmac on the rec.
- Space for leisure is smaller in the proposed new building/ don't want to lose use of pavilion.
- Shared access seems unfeasible so diminishment of the tennis courts
- Particular disruption to facilities during the construction period

4.10. **Absence of need to expand Dundonald School as no lack of school places in the local area.** Respondents felt that there was no need to expand Dundonald School as:

- Demand is not in this area
- Uncertainty over future demand
- Lots of children currently at the school are not local and this will increase
- How can there be a need when there are vacancies elsewhere e.g. at Joseph Hood, Hatfeild & Hillcross
- There is no demographic need – LB Merton is just 'cherry picking' outstanding schools which will take away demand from other schools
- Previous expansions should have covered increase in the birth rate
- Demand is in the Gap Road area
- The council has failed to demonstrate that there are no other options

4.11. **Absence of need to expand Dundonald School as alternative means to provide the school places.** Concern was raised that the council had not considered alternatives to provide the additional school places that were needed. The following was suggested:

- Expand elsewhere (location not suggested)
- Build a new school (e.g. empty buildings, brown field sites - location not suggested)
- Use old Wimbledon House School, Dorset Road e.g. as a satellite site
- Expand Wimbledon Chase further
- New school on Wimbledon Common
- Expand Bishop Gilpin/ former Park House Middle site
- Look at the sibling rule which will prevent the need for expansion to provide local places
- Build a new school to the north/east where it is needed e.g. Gap Road

4.12. **Negative impact on Dundonald School including standards and ethos.** The following comments were made on potential negative impacts on Dundonald School, though it should be noted that half the current parents, and the majority of pre-school parents supported the expansion of the school:

- Could change school's character & atmosphere/ethos
- Expansion will adversely affect the school's achievements/quality
- Cherish small schools. No guarantee standards will remain once expanded/ could affect the school's 'outstanding' rating.
- Increased catchments will result in children being driven to school and damage the 'local' aspect of school life
- Insufficient play space/ sub optimal school facilities
- Dundonald will become more cramped as no additional facilities (e.g. larger hall, music room or library) are planned
- Concerns over disruption to pupils from construction works

4.13. **Increased traffic & congestion.** Concerns were raised regarding increased traffic with the related congestion, noise, increased parking problems, increased pollution, detrimental to the ambiance of the neighbourhood, illegal 'fly-parking' by parents. Concern was also expressed by the increased noise of children.

4.14. **Mitigation.** The consultation response form encouraged respondents to outline any specific concerns that the local authority and school could address. These are summarised below:

- a) Agree new Covenant/ legal agreement to prevent further building work
- b) Building sympathetic design to the green space
- c) Any hard surface 'dual use' areas are suitably screened and landscaped
- d) No mature trees lost**
- e) Support facilities for players to be the same or better than now.
- f) Ensure an appropriate traffic assessment is carried out and the school agrees a Travel Plan to mitigate any congestion
- g) Why not build within the existing boundaries and have the public space accessible after school hours?
- h) Build into the Rose Garden instead/ building along Dundonald Road
- i) Ensure building is same architecture of school & houses
- j) Consider additional entrance to school from the Rec. Retain two paths from Rose Garden
- k) Involve local residents throughout the consultation process

### **Petition**

4.15. A petition was submitted through the Council's e-petition system entitled "Save Dundonald Recreation Ground". The petition called on "Merton Council to respect the Restrictive Covenant which prevents building on Dundonald Recreation Ground and to protect this valuable green space for the benefit of all, now and in the future." The petition started receiving signatures on 10 May 2011 and was closed on 7 August as there is a 12 week maximum under the council petition scheme. There were 2122 signatures of which 541 were electronic and 1581 were received on paper. There was a link to the e-petition on the Protect Dundonald Rec website and it was listed in newsletters distributed by the "Protect Dundonald Rec" campaign group.

### **Friends of Dundonald Park**



4.16. The Friends of Dundonald Park were established several years ago to support Dundonald Rec. The council consulted the group prior to the consultation and, given the wide range of views amongst the committee and members of the Friends in relation to the council's proposal, the committee agreed to continue taking a neutral stance towards the proposed expansion of the school but to continue to do its best to work with the council with the following principles as guidance:

- No overall loss of green space
- No permanent appropriation of land to put it out of use of the wider community
- The siting, height and bulk of the new school buildings minimise the impact on the park's openness;
- The buildings are well integrated with the existing school
- The paths and access for other park users are not compromised
- Generous landscaping is provided to hide the buildings
- Compensating improvements to the park are provided

### **Part 2 of consultation – design options**

4.17. The consultation form requested people responding to state their preference for one of the 3 options put to consultation. Of the 386 responses, only 89 gave a preference for an option. For a number of people this was because they did not wish to support any of the options. Of the 89 people expressing a preference, the vast majority preferred option C. The following comments were made in relation to the design:

- As few trees as possible removed.
- Enhance the pavilion
- Maintain present sports facilities
- Changing rooms essential
- Hall available to public during school hours
- Decent rooms for local residents to use including a kitchen (Friends could sell refreshments)
- Coffee bar/cafeteria provided
- Keep the bowling green
- No need for bowling green
- Larger children's playground,
- Better apparatus for younger children to use
- More climbing equipment for older children and/or adults
- Improved facilities for older children, e.g. skateboard area, zip wire, 5-a-side football facilities
- Playground provision maintained during the construction period.
- Picnic benches near playground
- Tennis courts with nets provided again
- Tennis courts available during school hours
- Pleasant garden for sitting in (replace Rose Garden away from the road).
- New pavilion with access from Dundonald Road would be a major asset for the community.
- Access to school halls 'out of hours'

- Improved public buildings to support local community activities (e.g. music rehearsal); maintain a perimeter path
- Keeping both playground areas together
- Community hall large enough for function hire
- Do not increase tarmac in park
- Look at alternative option e.g. building on Rose Garden and within existing footprint
- Do not build on the Rose Garden.

## **5 OFFICERS RESPONSE TO THE CONSULTATION, ALTERNATIVE OPTIONS AND RECOMMENDED WAY FORWARD**

### **Part 1 of consultation – principle of expanding Dundonald School**

- 5.1. The Directors of Children, Schools and Families and Environment and Regeneration Departments recognise that a majority of residents who responded to the consultation and who are not parents with children either at Dundonald School, or pre-school parents, are against the council's proposal. Some are strongly against it, as evidenced by the Protect the Rec. Campaign Group.
- 5.2. However, it is advised that Cabinet needs to consider the statutory responsibilities of the council to provide school places and to balance this against the council's strong support to maintain and enhance public open space for the benefit of residents. It is advised that the following questions are considered in making its decision on the way forward:
- Is there a requirement to expand Dundonald School, or are there any alternatives?
  - If it is a requirement are there any negative consequences, particularly in relation to three areas demonstrated in the consultation responses, namely standards and ethos of the school, the recreation ground and increased traffic? If so, can these be mitigated and once this is considered, does the requirement for the scheme override any negative consequences?
  - Is the proposal lawful, and therefore deliverable within reasonable timescales?
- 5.3. **Is there a requirement to expand Dundonald School, or are there any alternatives?**
- 5.4. The requirement to provide additional school places is overwhelming. The council, despite a number of site searches, cannot presently find a viable site in the Wimbledon area to build a new school. All the sites suggested in the consultation responses have again been considered and, as answered in the Council's Q&A, are not viable. Given the increasing need the council is also finding it challenging to expand further schools in the area to meet local need. There was an emergency requirement for Dundonald to provide an extra 30 places for September 2011 as there were no other local alternatives. Based on pupil forecasts, with concrete birth data providing robust figures for at least the next three years, this position will exacerbate rather than improve. If children are to attend a school that they can walk to it is therefore essential that Dundonald School expands

- 5.5. The views of pre-school parents demonstrated a strong desire for Dundonald School to be expanded to provide additional local school places. The government guidance shows that there is a strong rationale to expand Dundonald School under Education guidance since the council has a statutory requirement to provide sufficient school places, and Dundonald School is a popular and successful, “outstanding”, school, thus the expansion should increase the number of children receiving an outstanding education.
- 5.6. The demographic evidence is also overwhelming and new birth rate data from the Office for National Statistics confirms that the rise in demand is being sustained and requires permanent solutions.
- 5.7. **Are there any negative consequences, particularly in relation to three areas demonstrated in the consultation responses, namely standards and ethos of the school, the recreation ground and increased traffic? If so, can these be mitigated and once this is considered, does the requirement for the scheme override any negative consequences?**
- 5.8. Officers’ responses to the three areas where potential negative consequences have been identified, are as follows:
- 5.9. **Dundonald School standards and ethos:** There was a balanced response from current parents but a strong majority of pre-school parents in support of the proposal. Some parents expressed concern regarding the impact on standards of an expanded school. However, the Head of Education has considered this and can see no evidence to support this view. In particular, there is no empirical evidence to suggest that either smaller or larger schools perform better, there being other more significant factors including the quality of school leadership.
- 5.10. Moreover, a 2FE school has the following opportunities
- Staff teams increased to provide breadth of knowledge, skills and expertise.
  - Staff development opportunities: to work in different year groups, develop curricular expertise or specialism etc.
  - Option to share responsibilities and duties across a bigger workforce therefore
  - reducing workloads across the staff team, e.g. shared planning and preparation of lessons and resources.
  - Option to re-organise / re-shape ways of working /organising
  - Improved resources and premises to meet the 21st Century needs of all children.

There are issues of perception that can make a 1-form entry school feel attractive:

- A 1-form entry school or smaller is often a necessity in a more isolated area to ensure
- children have a local school that they can attend.

- With a lower number of parents and children, parents can feel a greater sense of community at a 1FE school since it is easier to get to know everyone.

However, the Head of Education feels that any issues can be overcome by the following:

- Dundonald is an "outstanding", successful & popular school with a strong ethos
- There is experienced leadership in the school
- The parent community values the school and recognises the good provision.
- A governing body with the resources to support the school well, particularly at times of change.

5.11. **Increased traffic & congestion** This is a concern of local residents for all school expansions. The council is seeking to provide local school places for children to walk to school and prior to a planning application a full traffic impact assessment will be undertaken which will consider the traffic impact and any measures that would be appropriate.

5.12. **Impact on recreation ground:** In relation to the concerns raised by residents in relation to the rec., officers advise that the following should be considered:

- If the school is to have direct access to the dual use hard court area the proposal will have some impact on one of the footpaths to the Rose Garden, at least during school hours. The school cannot operate effectively with 420 pupils without this direct access but detailed design work should seek to mitigate this as far as possible to ensure an effective perimeter path around the rec.
- In relation to loss of open space, the 3 options put to consultation all have a building that is slightly larger than the building proposed to be demolished i.e. the pavilion. However, the proposal should be developed to ensure the footprint of any new building in the rec. is not greater than the footprint of current buildings. At the time of writing this report, officers are currently working with architects and the school in considering more detailed design and spatial options than were available during the consultation and are optimistic that the footprint of the new building would be within the overall footprint of current buildings. The scheme being developed would also allow the children's public playground to be expanded and a larger multi use games area (MUGA) for dual school and public use, thus enhancing the public open space in the rec.
- It would be necessary to appropriate some of the recreation ground for the exclusive use of Dundonald School to enable appropriate external Early Years play space. However, it is suggested this should be limited to an area of less than 300 metres<sup>2</sup>. This is less than the area between the bowling green and the pavilion that excludes general public use through an enclosure fence, and would be opened to general public use as part of the scheme. This also needs to be set in the context of the total recreation ground area being approximately 48,000 metres<sup>2</sup>.

- In relation to loss of mature trees – the design should alleviate this as far as possible, backed by a detailed arboriculture assessment
- There were mixed views in the consultation on the bowling green and in view of this it is suggested no decision is made at this stage on its future. There is finance in the scheme for a replacement bowling green or alternative external facilities for park users e.g. an outside social area with benches or a larger children’s public playground. A decision should be made following further discussion with the 13 bowling club members and a sports needs assessment of the availability of bowling green facilities in relation to need in the area.
- In relation to comments that the building will harm the appearance and diminish the value of the Rec - a two storey building may appear more imposing than a single storey pavilion, but, as recognised by some of the respondents, should be of far greater quality than a run-down 1950/1960s building of temporary style construction. The council should consult on the appearance of the building prior to a planning application.
- In relation to comments that the larger MUGA (hard court “Multi use games area”) will destroy the peaceful ambience of the Rose Garden and lead to more tarmac on the rec, a larger MUGA is an essential element of the scheme to provide sufficient play space for the school. It should also provide more recreational facilities for the public compared to a bowling green of 1352m<sup>2</sup> used only by the 13 current members of a bowling club. Further work should be undertaken on how the larger MUGA could better be used out of school hours, and how it could be effectively screened from the Rose Garden to reduce any noise.
- Dual use to the MUGA will be similar to the present position, with access for the school during school hours and availability to the public at all other times, but should be formalised with a user agreement between the governors of the school and the council’s Environment and Regeneration Department to ensure that responsibilities and times of use are clear
- In relation to comments that space for leisure is reduced in the proposed new building compared to the pavilion there will be more indoor leisure facilities as part of the proposal. As well as the current pavilion community room being replicated in the proposal, under option C it would be more accessible when the park is closed. In addition, 2 school hall spaces, amounting to 230m<sup>2</sup> would be available to the community for recreational use outside school hours i.e. most evenings and at all times during the weekends and school holidays. All would be provided in modern, purpose built facilities.
- Officers are aware of the potential disruption to facilities during the construction period and will need to consider this carefully. In particular, the consultation responses were clear that a good quality children’s public playground should be maintained.

- Many consultation responses outlined the breaching of the covenant and how this would show a lack of trust from the council and would set a dangerous precedent. The legal considerations are outlined in section 6 of this report. The view of the Director of the Environment is that this scheme offers the potential for benefits from a leisure perspective, especially in providing modern pavilion and indoor leisure facilities. However, the consultation responses showed that the precedent issue is clearly one of concern. This suggests that the council should make an application to the upper tribunal for a minor modification to the covenant, and consider any further practicable measures to demonstrate that there would be no future proposals that would encroach on the rec.

5.13. Officers' overall conclusion is therefore that there is an overriding need to progress the scheme. By managing the project carefully and considering concerns raised during the consultation in developing the design, any negative impacts cannot be considered substantial compared to the fundamental requirement to provide school places. Further, as noted above, the Director of Environment and regeneration advises that the scheme provides a key opportunity to improve and modernise local recreation facilities. It also offers the opportunity to review the priorities for the recreation ground facilities in relation to the needs of bowling versus other leisure activities.

**Is the proposal lawful, and therefore deliverable within reasonable timescales?**

5.14. The legal advice is that there are more processes to be followed than in most school expansion and therefore higher risks. However, given the need outlined in this report these processes should be progressed.

**Part 2 of consultation – design options**

5.15. The strongest view emerging from the consultation was that option C was the preferred option, although the general concerns noted in the paragraphs above also need to be taken into account. It is therefore suggested that the design is taken forward seeking to mitigate the above concerns as far as possible, and that officers undertake a further consultation prior to the planning application based on a single design layout, which would be the layout put forward in an application to the upper tribunal.

5.16. Some responses suggested other layout options to that consulted upon such as building within the Dundonald School site or the Rose Garden. Officers have considered both these options in detail with its design consultants and a detailed appraisal shows a number of issues that make it undesirable including suitability and access to play space for 420 children. The appraisal will be published on the council's website.

**6 LEGAL CONSIDERATIONS**

- 6.1. There are four considerations in relation to the council's proposal
- Expansion of the school under Education acts and the related government guidance
  - The covenant on Dundonald Recreation Ground

- Freeing the land from its designated use as Public Open Space
- Planning permission

### **Education acts and the related government guidance**

- 6.2. The Council has a duty under section 14 of the Education Act 1996 to ensure that sufficient schools are available for its area. Through a series of Education Acts local authorities are under a statutory duty to ensure that there are sufficient school places in their area, promote high educational standards, ensure fair access to educational opportunity and promote the fulfillment of every child's educational potential. They must also ensure that there are sufficient schools in their area, promote diversity and increase parental choice.
- 6.3. Permanent school expansions follow a statutory process under the various Education Acts and the government guidance "Expanding a Maintained Mainstream School by Enlargement or Adding a Sixth Form - A Guide for Local Authorities and Governing Bodies" as has been followed for previous recent expansions. This involves consultation on proposals, publication of formal notice of proposals and a decision by the council whether to approve the proposals after consideration of public representations.
- 6.4. The governors of the school being proposed for expansion, and local diocesan authorities are able to appeal to the Schools Adjudicator if they disagree with the decision of the local authority to approve proposals. The adjudicator is required to have regard to the same statutory guidance as the local authority in considering the decision.
- 6.5. There is a presumption in favour of proposals to expand successful and popular schools to meet parental preference. The decision maker would also consider the effect on standards, including on other schools in the area and whether capital funds are available for the proposal to be implemented.
- 6.6. The Council has followed the consultation stage of the proposal so the next stage would be publication of formal notice of proposals.

### **The covenant on Dundonald Recreation Ground**

- 6.7. All options in the consultation involve demolishing the existing single storey pavilion for the rec. and replacing it with a two storey building providing rec and school facilities on rec. land.
- 6.8. There is a restrictive covenant on the title to Dundonald Recreation Ground dating back to the 19<sup>th</sup> century when the Council acquired the land. This states that "no building or other erection not reasonably required for use in connection with a pleasure ground shall at anytime be erected or made upon the said piece or parcel of land".
- 6.9. It appears likely that this covenant was intended to reflect agreement with the original transferors that the Council should maintain the land as a park for the enjoyment of the public at large rather than to confer rights enforceable by adjoining landowners. However, it is possible that there may be local landowners with individual property rights who could oppose an alternative use. Investigation has found no local landowners with such rights.

As far as the Council is aware they doubt whether there are any local landowners who have the benefit of this covenant but this is not conclusive.

- 6.10. Although the new building would provide replacement parks facilities and other facilities for a community benefit e.g. school halls that could be let in the evening for leisure purposes there is no doubt that in view of it providing specialist school provision there would be a breach of the covenant.
- 6.11. The Council could choose to act contrary to the covenant given the fact that investigations have found no landowners that have the benefit of it. Alternatively the council could apply to the Upper Tribunal to seek an amendment or waiver to the covenant.
- 6.12. This course of action would ensure there was no risk of a future claim against the Council but is a lengthy process. Although advice is that the council should be successful in its application there is no certainty. The council should also take into consideration that it is acting as a public body rather than a private individual or institution.

### **Appropriation of open space**

- 6.13. The recreation ground is designated for use by the Council as Public Open Space. This means the Council are not able to do as they wish with the land without following the procedure set out in section 123 of the Local Government Act 1972 which means the land required will need to be appropriated from Leisure Services to Education
- 6.14. Under section 122 the local authority must first advertise its intention to appropriate the land in a local newspaper for two consecutive weeks setting out their proposals for land and invite anyone who wishes to object to do so.
- 6.15. The local authority must then consider any objections before reaching their decision
- 6.16. It is recommended that should the council wish to proceed with the scheme and forward an application to the Upper Tribunal, it should wait for the result of this application before advertising for the appropriation of Public Open Space.

### **Planning permission**

- 6.17. The scheme would require planning permission. The proposal to expand the school under Education Acts can be approved before or after planning permission is received. If before, it can be approved subject to planning permission.
- 6.18. A planning application would be considered by the Council's planning applications committee. The planning application can be considered on its merits without the council having any approval in relation to the process of expansion under Education Acts, the restrictive covenant, or appropriation of open space.
- 6.19. The planning application process includes a consultation process. There is no legal requirement to consult before this process. However, it is considered good practice to do so.

## **7 TIMETABLE**



- 7.1. Should cabinet approve the recommendations in this report the proposed timescales would be as follows:
- 7.2. October 2011– Application to the Upper Tribunal to request a modification or waiver of the restrictive covenant
- 7.3. October 2011 – Start of a pre-planning application consultation on the design of the building, based on a single option, with a view to a planning application in December 2011
- 7.4. Subject to the decision of Upper Tribunal, continuation of education and appropriation legal procedures, with the aim to commence construction in summer 2012 for completion in September 2013
- 7.5. The application to the Upper Tribunal can take several months, hence it is recommended this is overlapped with the planning application process to prevent undue delay on the scheme.

## **8 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

- 8.1. Funding for the expansion of Dundonald School is included in the council's capital programme, which provides for 18 permanent school expansions since 2008.
- 8.2. The capital estimate for Dundonald School is commercially sensitive; although higher than average school expansion projects due to the need to provide additional pavilion and other recreational facilities, the cost is reasonable as it is balanced by the fact that no adaptation works are required to the existing main Dundonald School building.
- 8.3. There are likely to be higher legal and administrative costs than for a typical school expansion scheme as a result of the additional processes necessary as outlined in the report.
- 8.4. The property implications are outlined in the legal section to this report.

## **9 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

- 9.1 All school expansions are required to meet the basic need of children to receive an education, and this can be in conflict with other residents' desire not to have the impact of development in their neighbourhood. The expansion of Dundonald School does not mean the loss of a bowling green, a sport for which older people are more likely to play, but as outlined in the report, there is an opportunity for the council, in its role as leisure provider, to consider the best use of space in the recreation ground for the future.
- 9.2 The Equality Act 2010 introduced a new Public Sector Equality Duty ,which came into effect in April 2011.This covers eight 'protected characteristics'(age, disability ,gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation).It establishes a general duty on public bodies to have 'due regard' in carrying out its functions to the need to:
  - a. eliminate unlawful discrimination, harassment and victimisation:
  - b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it ;and

- c. foster good relations between people who share a protected characteristic and those who do not.

In making any decision members should have due regard to the above duty.

## **10 CRIME AND DISORDER IMPLICATIONS**

- 10.1. No specific implications

## **11 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

- 11.1. The risk of this scheme to deliver is outlined in the last part of section 6 to this report. The risk and timescales need to be managed to ensure the project can be delivered
- 11.2. Health and safety would be considered carefully in the development of the project to ensure there will be a clear separation between pupils, teachers, parents, recreational ground users and construction work, while ensuring the school and recreation ground can continue to function appropriately during the works.

## **12 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

- Appendix 1 – Consultation summary including written responses
- Appendix 2 – Notes of public consultation meetings

## **13 BACKGROUND PAPERS**

- 13.1. There are many related document published on the council's website. These are as follows:

- Summary of all responses
- Dundonald Consultation Document,
- Dundonald Feasibility Plans,
- Q&As from Consultation to date (updated 28.7.11)
- Drawings shown at drop-in sessions with scale shown (Note there are also further drawings to improve clarity);
- Notes of meeting on 22 June 2011
- Notes of meeting on 8 June 2011
- Recorded notes of meeting on 11 November 2010
- Primary Places Analysis Paper July 2010
- Presentation from Public Meeting held on 8 June 2011
- Further drawings provided on 8 June 2011.
  - Existing drawings
  - Option A drawings
  - Option B drawings
  - Option C drawings.

The original individual responses to the consultation are available in the Members' library

## **APPENDIX 1**

### **DUNDONALD PRIMARY SCHOOL CONSULTATION**

#### **CONSULTATION PROCESS AND MEETINGS**

The consultation started on 18 May 2011. The original closing date was 28 June but this was extended to 11 July 2011.

The consultation was advertised with a leaflet distributed to 4,500 residents, all parents of children attending Dundonald School, neighbouring schools and Local Authorities, diocesan authorities, all local councillors and MPs.

A public meeting was held on 8 June at Dundonald School. Unfortunately demand exceeded capacity of the hall so a further public meeting was held on 22 June at St. Andrews Church Hall. The first meeting was attended by approximately 130 and the second meeting by approximately 200 people.

Notes of all the points raised at the two meetings are included as appendix 2. Responses to all of these points are contained in a questionnaire and answer sheet which was updated during the consultation. This is available on the council's website <http://www.merton.gov.uk/schoolsconsultations.htm>

Two "drop in" sessions were organised to discuss the design – on 23 May and 8 June 2011.

#### **SUMMARY OF WRITTEN RESPONSES**

##### **Overall summary**

The consultation document requested responses in two parts:

1. On the principle of expanding Dundonald School. Respondents were asked to "provide comments on the principle of expanding Dundonald Primary School to 2 forms of entry (60 pupils per year), including any specific concerns you may have that the Local Authority and school could address". No specific yes/no question was asked as the council wished to encourage detail on concerns and suggestions rather than implying we were holding a referendum.
2. The preferred design out of the three options put to consultation and "any comments and whether there are there any high or low priorities for the scheme or facilities you would like to see in the park as part of the scheme".

Lastly respondents were asked whether they were a parent with a pupil currently at Dundonald Primary School, a parent with pre-school children, a member of staff, a local resident without a direct interest in the school's education, or other e.g. representing an institution.

There were 386 written responses to the questionnaire or letters received during the consultation that did not appear to be a duplicate of the consultation questionnaire so were also included as a response to the consultation.

Respondents were asked to categorise themselves and the breakdown is listed below.

Parents of current pupils at Dundonald	55
Parents with pre-school children	64
Local residents including interested groups/not stated	267
	-----
Total	386
	-----

A summary of all 386 responses is posted on the council's website <http://www.merton.gov.uk/schoolsconsultations.htm>

To obtain a direct view of the competing views from four respondents that have appeared to have taken time to consider the consultation carefully, it is recommended that the following are viewed in full:

Positive: responses 329 and 335

Negative: responses 31 and 356

### Part 1 - Principle of expanding Dundonald School

The consultation form did not specifically ask a closed questionnaire on whether people supported the principle of expanding Dundonald School or not. However, in analysing the responses the administrator was asked to view whether the response was generally positive, negative, or neutral/unclear. While there can be no exact interpretation – and there is no need as it is not a referendum and the detail of responses are most important – it does give a general view of the response. The breakdown of positive and negative by category is below.

Parents of current pupils at Dundonald	55	24 Positive, 24 negative, 7 other
Parents with pre-school children	64	42 Positive, 12 negative, 10 other
Local residents including interested groups/not stated	267	55 Positive, 186 negative, 26 other
	-----	
Total	386	121 Positive, 222 negative, 43 other
	-----	

In summary, there was an exact balance of view of current parents at Dundonald School, a significant majority of local residents were negative towards the proposal, but a significant majority of parents with pre-school children were positive.

Some respondents queried the validity of the consultation process. However, council officers do not accept that this had any material impact on the consultation responses, and the council has provided detailed responses to residents that wrote to the council in regard to this.

A summary of the main issues and objections that came from part one of the consultation is below:

<p><b>Main issues &amp; objections</b></p>
<p><b>1. Negative Impact on the recreation ground</b></p> <p><b>General comments:</b></p> <ul style="list-style-type: none"> <li>a) Encroachment/detrimental impact on the rec/ reduction of local amenities</li> <li>b) Council must not breach the covenant</li> <li>c) Breaching the covenant would set a dangerous precedent</li> <li>d) Character of rec will change</li> <li>e) Should only be rec buildings in the rec</li> <li>f) worried dogs will be banned from the rec.</li> <li>g) If expanding the school/impacting on the park the council is ignoring the wishes of the local community</li> </ul> <p><b>Specific negative impacts</b></p> <ul style="list-style-type: none"> <li>h) Impact on footpaths/reduced accessibility to Rose Garden and Holocaust memorial;</li> <li>i) Loss of open space;</li> <li>j) Loss of mature trees</li> <li>k) Loss of bowling green (unfair on elderly people)</li> <li>l) The building will harm the appearance and diminish the value of the rec</li> <li>m) MUGA (hard court "Multi use games area") will destroy the peaceful ambience of the Rose Garden and lead to more tarmac on the rec</li> <li>n) Space for leisure is smaller in the proposed new building/ don't want to lose use of pavilion.</li> <li>o) Dual use access seems unfeasible so diminishment of the tennis courts</li> <li>p) Particular disruption to facilities during the construction period</li> </ul>
<p><b>2. There is no need to expand Dundonald School to provide local places:</b></p> <ul style="list-style-type: none"> <li>a) Demand is not in this area</li> <li>b) Uncertainty over future demand</li> <li>c) Lots of children currently at the school are not local and this will increase</li> <li>d) How can there be a need when there are vacancies elsewhere e.g. at Joseph Hood, Hatfeild &amp; Hillcross</li> <li>e) There is no demographic need – LB Merton is just 'cherry picking' of outstanding schools which will take away places from other school</li> <li>f) Previous expansions should have covered increase in the birth rate</li> <li>g) Demand is in the Gap Road area</li> <li>h) The council has failed to demonstrate that there are no other options</li> </ul>
<p><b>3. Negative impact on Dundonald School including standards and ethos</b></p> <ul style="list-style-type: none"> <li>a) Could change school's character &amp; atmosphere/ethos;</li> <li>b) Expansion will adversely affect the school's achievements/quality</li> <li>c) Cherish small schools. No guarantee standards will remain once expanded/ could affect the school's 'outstanding' rating.</li> <li>d) Increased catchments will result in children being driven to school and damage the 'local' aspect of school life</li> <li>e) Insufficient play space/ sub optimal school facilities</li> <li>f) Dundonald will become more cramped as no additional facilities (e.g. larger hall, music room or library) are planned</li> <li>g) Concerned over disruption to pupils from construction works</li> </ul>
<p><b>4. Increase traffic &amp; congestion</b></p> <ul style="list-style-type: none"> <li>a) Increase congestion and noise from traffic</li> <li>b) Increased parking problems,</li> <li>c) Increased pollution</li> <li>d) Detrimental to the ambience of the neighbourhood</li> <li>e) Illegal fly-parking by parents.</li> </ul>

f) Increased noise of children

**5. Suggestions on mitigation:**

- a) Agree new Covenant/ legal agreement to prevent further building work
- b) Building sympathetic design to the green space
- c) Any hard surface 'dual use' areas are suitably screened and landscaped
- d) No mature trees lost
- e) Support facilities for players to be the same or better than now.
- f) Ensure an appropriate traffic assessment is carried out and the school agrees a Travel Plan to mitigate any congestion
- g) Why not build within the existing boundaries and have the public space accessible after school hours?
- h) Build into the Rose Garden instead/ building along Dundonald Road
- i) Ensure building is same architecture of school & houses
- j) Consider additional entrance to school from the Rec. Retain two paths from Rose Garden
- k) Involve local residents throughout the consultation process

**6. Suggested alternatives to expanding Dundonald School**

- a) Expand elsewhere (location not suggested)
- b) Build a new school (e.g. empty buildings, brown field sites - location not suggested)
- c) Use old Wimbledon House School, Dorset Road e.g. as a satellite site
- d) Expand Wimbledon Chase further
- e) New school on Wimbledon Common
- f) Expand Bishop Gilpin/ former Park House Middle site
- g) Look at the sibling rule which will prevent the need for expansion to provide local places
- h) Build a new school to the north/east where it is needed e.g. Gap Road

**7. Positive comments**

- a) Accept the demand for and duty to provide additional places
- b) Places are clearly needed "Vitaly necessary". All options are sympathetic to the rec
- c) Desperate shortage of places in the area - current catchment is too tight
- d) In total agreement for local school places
- e) Surely John Innes would have welcome proposal as he was heavily involved in education e.g. leading figure in the 1895 erection of Rutlish School
- f) the current 'eyesore', shabby and dilapidated pavilion will benefit from being replaced
- g) 2FE schools offer more opportunities. Expansions spread across existing good schools is ideal solution
- h) Support proposal in the absence of any alternatives
- i) Expanding outstanding schools makes sense economically

**8. Comments on an Admissions Priority Area ("APA") (Note – consultation document confirmed that we were not consulting on an APA but may do so in the future)**

- a) Not in favour of catchment area beyond the closest school criteria
- b) Would like an APA favouring roads to the east/north east e.g. to include Raymond & Malcolm Roads to the north and Graham Road to the east

**9. Criticism of consultation process**

- a) failure to mention Covenant;
- b) failure to include feasibility drawings with the document;
- c) inadequacy of drawings e.g. no elevations so can't see the impact
- d) lack of clarity regarding impact on the rec & capacity of the school/Merton Council's long term agenda
- e) vague and misleading statements
- f) failure to provide any explanation for the 'profile' questions at the end of the document

**10. Criticisms of past decisions made by the council/on-going related decisions**

- a) The council should restrict number of homes being converted to multi-occupancy.
- b) This is the fault of the council for selling off of school sites in the past

- c) The council shouldn't give planning permission for housing when there are no school places
- d) The council could have uses the old B&Q site in Alexandra Road

## Part 2 – Design options

A number of people, especially those against the Council's general proposal, did not wish to support any of the options and a preference was not given for one of the council's 3 options.

The results by category was as follows:

Parents of current pupils at Dundonald	55	18 for option C, 3 for A
Parents with pre-school children	64	32 for Option C, 4 for A
Local residents including interested groups/not stated	267	28 for option C , 4 for A
	-----	
Total	386	78 for option C, 11 for A
	-----	

Therefore of the 386 responses, only 89 gave a preference for an option. Of those, the vast majority preferred option C.

A summary of all the comments is below:

### 1. Comments on priorities for the design:

- a) As few trees as possible removed.
- b) Enhance the pavilion
- c) Maintain present sports facilities
- d) Changing rooms essential
- e) Hall available to public during school hours
- f) Decent rooms for local residents to use including a kitchen (Friends could sell refreshments)
- g) Coffee bar/cafeteria provided
- h) Keep the bowling green
- i) No need for bowling green
- j) Larger children's playground,
- k) Better apparatus for younger children to use
- l) More climbing equipment for older children and/or adults
- m) Improved facilities for older children, e.g. Skateboard area, zip wire, 5-a-side football facilities
- n) Playground provision maintained during the construction period.
- o) Picnic benches near playground
- p) Tennis courts with nets provided again
- q) Tennis courts available during school hours
- r) Pleasant garden for sitting in (replace Rose Garden away from the road).
- s) New pavilion with access from Dundonald Road would be a major asset for the community.
- t) Access to school halls 'out of hours'
- u) Improved public buildings to support local community activities (e.g. music

- rehearsal); Maintain a perimeter path
- v) Keeping both playground areas together
  - w) Community hall large enough for function hire
  - x) Do not increase tarmac in park
  - y) Look at alternative option e.g. building on Rose Garden and within existing footprint
  - z) Do not build on the Rose Garden



## **APPENDIX 2**

### **NOTES OF PUBLIC MEETINGS HELD ON 8 JUNE AND 22 JUNE 2011**

#### **Notes of Consultation on Proposed Expansion of Dundonald Primary School Wednesday 8 June 2011, 7.30pm**

##### **Introduction to the meeting**

Sandy Adamson introduced himself as an independent chair and was not an employee of the council but has worked in the Department for Education and in Local Government. He is currently the chair of governors of St. Teresa's School, which is a Voluntary Aided School in Merton.

The meeting was attended by approximately 130 parents, staff, governors, local councilors, and residents. The school hall was not large enough to accommodate the large number of interested parties that wanted to attend the meeting so only residents that arrived by 7.15pm were in attendance. After deliberation, following the chair's decision that no filming should be allowed, the meeting started.

##### **The following speeches/presentations were given:-**

**Lorraine Maries – (Chair of “Protect Dundonald Rec”)** presented to the meeting explaining that they are not a political group who have come together because of our concerns for the Rec.

The full transcript is appendix 1 to these notes

**Councillor Peter Walker (LB Merton Cabinet Lead member for Education)** explained the reasons behind the proposal including the increase in the number of children, the Council's legal duty to educate children of 4 years old in classes of 30 pupils, and stating that the proposal will not ruin the rec.

**Tom Procter (Manager of School Organisation, LB Merton)** provided detail on the legal issues, the design, and the catchment of the school.

The powerpoint presentations from Peter Walker and Tom Procter are posted on the council's website <http://www.merton.gov.uk/schoolsconsultations.htm>

**Fiona Duffy (Headteacher, Dundonald Primary School)** explained her commitment to a local school for local children. The recreation ground enhances the education value to children.

##### **Questions & Comments**

Overall, a majority of those present had concerns about, and some strongly opposed - mainly over the encroachment on the present boundaries of Dundonald Park, both regarding its legality and the practical consequences for existing facilities, but also in relation to Dundonald School doubling in size.

The following were the particular questions recorded. Initial responses were provided on the evening, and **all additional questions with answers have been added to the council's Q&A on the website to ensure there is an official council position provided on each question asked at the meeting:**

#### **The council's Q&A on the website**

<http://www.merton.gov.uk/schoolsconsultations.htm>

#### **Initial questions and comments**

1. It is disappointing that there are people outside that cannot attend the consultation meeting.
2. The chair cannot be independent if he has been appointed by the Council.

#### **The Covenant**

3. It is not clear whether you are going to deal with the covenant? Will the council go to an independent body?
4. Is there any protection for the park?
5. Who are the beneficiaries?
6. Has anyone asked who has a legal benefit of the covenant?
7. An application for a variation will be required. What legal documents can be put in place to prevent further expansion on the park?
10. Have the LB Merton planners commented on the development thus far?
11. Is there any covenant on the school area?

#### **Recreation Facilities**

12. What will happen to the bowling green? It takes years to build a bowling green. We will be lucky if we get the bowling green. How many members belong to the bowling club? A local facility like that is required so that we are not a drag on the NHS
13. In the Q&A document you state under moral trust issue that there is expected to be a cut on the revenue budget and that this is the case whether the bowling green is kept or not?
14. The tennis courts will not be available during the daytime and Wimbledon is known for its tennis.

#### **Why Dundonald Primary School Expansion and other issues**

15. Why Dundonald? Are Wimbledon Chase, Joseph Hood and all other schools in the area full?

- 16 Joseph Hood Primary School and Wimbledon Chase Primary School take children from further afield such as Morden and Mitcham. Will Dundonald take children from further afield?
- 17 People would be upset if local people are ignored and people from outside get places. What procedures are in place to check eligibility? I am concerned that people are abusing the system. I am of the opinion that there are sufficient places at Wimbledon Chase and other schools.
- 18 How many applied for admission to this school for the next academic year? How far do they live from the school? We do not want children that do not live local to the school.
- 19 Why does the council not build a new school? Why did the Council not develop the Gap Road site. The Council could have made a compulsory purchase order for the Gap Road property? Money was set aside. Luckily the new government has a policy of free schools which could provide new schools
- 20 What would be the period of expansion for the Dundonald expansion?
- 21 The problem is that the Council sold off many school sites in the past.
- 22 No one is speaking in support of the expansion. At the Wimbledon Chase consultation for expansion 100 parents spoke out against the Wimbledon Chase Primary School expansion. This was not recorded. The notes said that there was no objection against the expansion. This is a steamroller exercise by the Council and one sided.
- 23 What happens after 2013? How does expansion here help provide places for children that live in Wimbledon Village where the need is?
- 24 Schools cannot continue to expand indefinitely. At some point it is not going to be possible to continue to expand.
- 25 Surely there are other places where people need places.
- 26 Why has Wimbledon House School site (in Dorset Road) not been considered or the Emma Hamilton pub site (Kingston Road)?
- 27 Why were so many usable sites sold off by the council and what happened to the money from the sales of these properties?
- 28 Isn't your policy to expand outstanding schools wrong as it will just undermine any school elsewhere?
- 29 Dundonald school is doing well because it is a 1 FE school.
- 30 Isn't it the council's fault that we have an increase in children? Ordinary homes have been split into flats. Major developments have been approved. Children need green space now even more.

- 31 You will cut down on space available during construction. What would be the impact on the park? How would the construction vehicles get onto the site?
- 32 In the Q&A document you state under moral trust issue that there is expected to be a cut on the revenue budget and that this is the case whether the bowling green is kept or not?
- 33 It is not a park but a recreation ground. Do not take this away from people.
- 34 People would be upset if local people are ignored and people from outside get places. What procedures are in place to check eligibility? I am concerned that people are abusing the system. I am of the opinion that there are sufficient places at Wimbledon Chase and other schools.
- 35 The consultation document is misleading – It has ignored a tree that is on the existing site. Option B & C do involve loss of trees.
- 36 We need to understand that the council needs pupil places, but what is your understanding of the views of local residents?
- 37 No one is speaking in support of the expansion.
- 38 When is the next consultation meeting?
- 39 Some people have said to me that they were unaware of what they were signing for on the petition and that they believed that flats were being built on the park.
- 40 What is Miss Duffy's view on the expansion of the school? Everyone keeps interrupting. We are failing in this meeting.
- 41 I am the promoter of the proposed free school in Dorset Road but also I am a governor at Dundonald School. I came along to this meeting because I was unsure of my views. Cllr P Walker has told me why I should be in favour of the expansion and the Save the Rec have told me why I should be against it. I am shocked at the behaviour of the people here. People are shouting. I have not had the opportunity to hear what the effect would be on the park. I want to know whether this will be an opportunity to improve the park. The pavilion is dreadful. People are closing their eyes against this. There is a big demand for expansion. A Free school is not a substitute. It is a necessary addition.

### **Appendix 1 (to 8 June meeting)**

#### **Presentation by Lorraine Maries speaking on behalf of the Protect Dundonald Rec. Campaign group, Wednesday 8<sup>th</sup> June 2011 at Dundonald School**

The following facts and figures are taken from the Council's own documents, sources and plans.

#### **1. Why listen to 'Protect Dundonald Rec.'?**

We are a non-political group of local residents who have come together because of our concerns for the Rec. Non-political – that is important. Too many people have sought to ambush this consultation and treat it as an opportunity for political posturing. We're

trying to consider what is right for the local community and that means everyone, not just one group.

In Dundonald ward just 19% of households have dependent children (aged under 19). There are more households with single people (26%) and couples without children (23%). Then there are elderly people, students and mixed households. Everyone, including the children, benefits from the Rec. We want to see it preserved for future generations to enjoy.

## **2. Why are we concerned?**

Dundonald Rec is central to this community. It was set out before many of the houses to the south had been built. The land was sold to what is now Merton Council by John and James Innes in 1893. A legally binding covenant was entered into then to ensure that the land would be forever used as a Public Pleasure Ground. This is fact.

Building on the Rec would break the covenant which also states that "no building or other erection not reasonably required for use in connection with a pleasure ground shall at any time be erected or made on the said ... land". A school is not a building which is "reasonably required for use in connection with a pleasure ground" therefore a school building cannot legally be built on the Rec. The Rec has survived two world wars and a periods of economic hardship yet the covenant has been respected for 118 years.

The Council have finally publicly acknowledged the existence of this covenant, but have said they will ignore it. Will the Council also ignore the will of 1,475 residents and park users (who have signed our petition in the past month) who feel that this promise should be respected? Merton Council needs to respect our heritage, and our green environment. The Council's own objectives, published in their Core planning strategy this summer, include "Improving access to leisure facilities including opportunities for sport, play and relaxation" and "Conserving and enhancing Merton's green character and historic environment".

The health and wellbeing benefits of green spaces is well recognized in local and national policy. A recent Government White paper has moved environmental considerations in planning to the top of the agenda. But more than ever in the current economic climate we need to be vigilant to protect our green spaces. The covenant protects the Rec. To breach it sets a dangerous precedent.

## **3. What about education?**

Many of us are parents, and understand how difficult it is to ensure that our children have the best education available. Getting into the right school is a major worry. But here are the facts:

There are ten primary schools within a one mile radius of Dundonald. Six of these have expanded between 2008 and 2011. This is a 43% increase in the number of places for five year olds. Compare this with an increase in the birth rate of 30% (from 2003 to 2007).

There is already plenty of provision for local children in schools near to their homes. If places are not available at Dundonald for local children it is not due to lack of places,

but to the admissions policy. This places the sibling rule and parental choice higher than proximity to the school. Many parents want this, but in reality this means that some lose out in the resulting lottery.

An expanded school would bring children in from as far away as 1,000 metres. Are these really 'local' children' or are they children who actually live nearer to other local schools?

Nearly every household in the borough lives within 500m of a primary school. Other options include the possibility of expanding other schools which Merton Council has identified as having suitable sites, or building new schools in areas of high demand. Merton Council wants to follow a policy of expanding excellent schools. Shouldn't its policy be to ensure that all schools are excellent – and offer parents a real choice?

#### **4. What we could lose**

Dundonald School is by far the smallest site in the borough - 2,094 sq m. To double the number of pupils the Council's own plans show that they will have to annex an additional 2,000 sq m of the rec. The Council claims that this is alright because they will use the old pavilion. But the pavilion does not belong to the school. It is a public facility, and it is being taken away.

The new building has a footprint which is half the size of the current school. How can it accommodate an additional 210 children, plus community facilities. Is it a Tardis?

The Council say they will provide improved community facilities. The plans show:

Fewer changing rooms

A smaller kitchen

The loss of the bowling green

The Rose Garden – the only Holocaust memorial garden in the borough - will be isolated from the rest of the Rec. by double height fences around the school playground.

The school is regularly occupied by children from around 8 am to 6 pm. The indoor "shared use" facilities will therefore not be available to the public during these hours (which means not at all for about 6 months of the year).

#### **5. What we will get:**

Within seven years there will be 1,050 children, plus nursery, and some 100 staff, all coming to two schools within 350m of each other. That's a 66% increase in the number of children.

There'll be increased traffic (especially if children come from further away)

We'll get a hard play area which will only be available outside of school hours

We'll get major disruption of the playground, the pavilion and other facilities while the building work is on-going.

We'll get a broken promise – and a reduced recreation ground which the council will be able to develop further at any time for educational or other use.

If you are against building on Dundonald Rec. please say NO to Q1 of the consultation document, and protect this valuable green space.

## **Notes of Consultation on Proposed Expansion of Dundonald Primary School**

**Wednesday 22 June 2011, 7.00pm**

**at St Andrew's Church, Herbert Road, SW19**

### **Introduction to the meeting**

Rev Canon Stephen Coulson introduced himself as an independent chair and was not an employee of the council. He is vicar at St Mark's Church, Mitcham, and is currently a school governor in Merton.

The meeting was attended by approximately 200 parents, staff, governors, local councilors, and residents. An apology was received from Stephen Hammond, MP who was voting in the House of Commons.

### **The following speeches/presentations were given:-**

**Lorraine Maries – (Chair of “Protect Dundonald Rec”)** presented to the meeting explaining that they are not a political group who have come together because of our concerns for the Rec.

The full transcript is appendix 1 to these notes

**Councillor Peter Walker (LB Merton Cabinet Lead member for Education)** explained the reasons behind the proposal including the increase in the number of children, the Council's legal duty to educate children of 4 years old in classes of 30 pupils, and stating that the proposal will not ruin the rec.

**Tom Procter (Manager of School Organisation, LB Merton)** provided detail on the legal issues, the design, and the catchment of the school.

The powerpoint presentations from Peter Walker and Tom Procter are posted on the council's website <http://www.merton.gov.uk/schoolsconsultations.htm>

**Fiona Duffy (Headteacher, Dundonald Primary School)** explained her commitment to a local school for local children. The recreation ground enhances the education value to children.

### **Questions & Comments**

The following are all the particular questions and comments recorded at the meeting. Initial responses were provided on the evening, and all additional questions with answers have been added to the council's Q&A on the website to ensure there is an official council position provided on each question asked at the meeting.

1. Support very much the proposal in providing local schools in the local area. Own road held a street party celebrating the Royal Wedding and I was amazed at the number of children that lived in my road – there are a huge number of children in the area. Yes, there are problems with the Rec and we are concerned with the reduction in open spaces generally, but this proposal makes



sense – not taking land away, respect the Rec and enhance the space.

2. Would want my fellow residents to go to a successful school. Astounded that the pavilion has become elevated to Taj Mahal status. Only now that own children are older that they confess what sort of things used to go on behind it. Would like to congratulate the Council – proposing a secure and attractive use of facilities. An excellent scheme. Saddened by the literature being sent out – it is dishonest.  
Regarding the catchment area – it doesn't matter if it is 1km or 700m, parents should walk and not drive. In future, I would like fairness from both sides. It is a good scheme and I compliment the Council.
3. Does the bulge year class mean the expansion is a fait accompli? What happens next year?
4. We have had exceptional increases – what will happen with the secondary schools?
5. Flabbergasted at what the fuss is about. I live 150m from Merton Park Primary School and my child might not get in. Families are moving into all the houses sold in my road. It is a great place to live. Congratulate the Council because I am worried about the shortage of places. Proposals are sensible for now and the future. There is empty ground – please think about us with young children who need good quality state funded schools.
6. Neighbours have to drive to Pelham – it is outrageous and nimbyism of the worst kind.
7. Used to be a governor at Dundonald. Disturbed about this nonsense – where is it coming from? It is wrong that children at the school can't use the park. At first, I thought half the park was being taken up by the building. Vitriolic. Shame on colleagues who have had children at Dundonald and have signed the petition. People are desperate to get in as it is a fine school. Minimal change is being proposed – it is not a travesty but a minor infringement. People should think beyond their own gardens. Facilitate it as fast as we can.
8. Extra children could be accommodated on the current site by knocking down the dining hall and building there, and taking the roof off and adding another storey.
9. What about the empty building at the end of Dorset Road that used to be a school? Why not knock it down and build a new school?
10. I have owned my house for 10 years and I can see the school from my house but my child would not have got in the school last year as they live 13m too far away (still only 225m). They won't get in next year if there is no expansion.
11. The vitriol and nimbyism is embarrassing. I live only 285m away and my son didn't get into the school – he was 17<sup>th</sup> on the waiting list. Any change requires give and take. Live here and enjoy it. Proposal is a fair compromise – not to recognise this is a shock. It is disgusting and people should be ashamed.

12. I am a local resident, governor and chairman of free school campaign to provide a new school in Dorset Road. We have looked at demand and it is there and in addition to Dundonald expanding. We wouldn't be looking if there was no demand. The Council only let them into the site two weeks ago to see it. We are currently looking into it and we should not take it for granted that it is not suitable for a (one-form entry state funded) school. As a resident, I am concerned about the covenant and would want something else in its place.
13. I understand it is a good school and it is a shame children can't get in, but people supporting the Rec are not attacking parents with children and many people like it as a small school – It is not vitriol – we are passionate as well.
14. What about educational issues? Expansion is never beneficial. 1FE is ideal size. Don't understand the Council's policy. Need two new small schools. Expansion could harm educational excellence.
15. I live 300m from the school. If Dundonald doesn't expand, where will child my go?
16. Fully support the expansion – it is unfair for local children who should be able to get in. Have concerns over the size of the playground as it will be less than twice the current size which already feels small. Do not want an APA – catchment should stay the same.
17. Respect the need for places but also want people to respect the Rec. What about the old Emma Hamilton pub site or Dorset Road site?
18. Support scheme as the reasons are very apparent. There is minimal infringement but do understand the attachment to the Rec.
19. It was due to the generosity of previous landowners who gave us such spaces so there must be cast iron legal reassurances against any further building on the rec. Can't quite understand the hostility.
20. Looking at the information, why have the proposals for restricted hours in the playground been removed in Options A & B?
21. Have you applied to overturn the covenant? You don't think anyone will benefit – what about all those people who signed the petition?
22. What about a new school on the old Park House site? It will take the pressure off this area - if Dundonald is expanded there will be 1050 children attending two schools in this area.
23. Currently, apart from the pavilion, the 360° view from Dundonald Rec is Victorian or Edwardian buildings. What will the new building look like?
24. Am a supporter of 'Save our Rec' campaign – not sure why we have been portrayed as vitriolic and not dog walkers. I believe every parent should have that right – basic issue is that it is not yours to take – you can't take it if you can use it better than someone else. It belongs to the people as a Recreation

- ground.
25. You talked about alternatives – you don't have to set it up as a single site. There are operational challenges but these can be overcome.
  26. I hope the Planning Dept will block any future developments of flats, as we can't provide enough places now.
  27. No-one has mentioned why the Rose Garden remains untouched. It can be relocated – why is it sacrosanct? Why not build on it?
  28. Have taught at a dual-site and it is not beneficial for the children – cohesion, etc.
  29. Key thing is getting a new covenant – don't waste money on lawyers. Focus energy on design and accept it will happen.
  30. (Confirming from the presentation slide that the blue circle shows a 780m catchment with the bulge) What will be the catchment for the expansion?
  31. I Support the scheme. For those against it – is it because they think it is the thin edge of wedge?
  32. I have spoken to Holocaust Trust and Jewish Care and they have no objection to relocating the Rose Garden.
  33. Rev Andrew Wakefield – there is no Holocaust memorial. He was part of the group who planted one rose bush on Holocaust Memorial Day. One was also planted in John Innes Park.
  34. The pavilion has been in decline for the last 15 years and there is always the excuse there is no money for improvements. Concern is over the years promises made (e.g. tennis courts) – no comeback. Wimbledon Chase told they had to accept expansion because Dundonald couldn't expand due to the covenant. What will it look like? There will be no protection once the covenant is broken. Who will have control of the budget – parks or education? Know promises today won't be tomorrow.
  35. Concerned regarding aesthetics – will high standards be applied?
  36. Quotes legal position from the powerpoint slide. No good if I play bowls. How can I use the pavilion during school hours?
  37. Will there be a bowling green?
  38. I think the Council have acted but too quickly. The schools is already too squashed. Why are we limited to three options – we need longer to do it properly and sensibly.
  39. It is a good school and any increase would benefit the community.

40. Don't ruin the Rose Garden – it is a beautiful part of the Rec. What about building the other side?
41. Delighted to see the pavilion go – it is a blot on the landscape. I support Option C. There is a lot to gain from the school increasing to 2FE. Already have good extra-curricular activities.
42. What will be the construction time?
43. Bishop Gilpin governors vetoed their expansion. What is the Dundonald governor's mood? Son goes to the playgroup in the pavilion, how is this affected?
44. Don't object to the school expansion but oppose building on open area. With regard to the public playground – you state it will be larger in all 3 options, however this is not the case it is smaller in Option B. Option C it is bigger but how will it cope with double the number of children playing in it after school – the current one is already packed. Will we be without a playground during the construction?
45. My children didn't get into Dundonald but survived. The land was given to the people. This is thin end of the wedge. In future landowners will be reluctant to give their land to the Council. Will current users still have access during the day to the pavilion?

### **Appendix 1 (to 22 June meeting)**

#### **Presentation by Lorraine Maries speaking on behalf of the Protect Dundonald Rec. Campaign group**

The Protect Dundonald Rec. Campaign Group is a non-political group of local residents who have come together to oppose building on Dundonald Rec. We **are** opposed to building on the recreation ground, **NOT** the expansion of Dundonald School.

There is a Restrictive Covenant on Dundonald Recreation Ground. This legally binding agreement was made between what is now Merton Council and John & James Innes in 1893 when the land was transferred. The promise made was to preserve the Rec in perpetuity as a 'public pleasure ground' and that "no building or other erection not reasonably required for use in connection with a pleasure ground shall at any time be erected or made on the said ... land". A school is not a building which is "reasonably required for use in connection with a pleasure ground" therefore a school building cannot legally be built on the Rec.

#### **Lets look at Open Space and the planning process:**

Dundonald School is by far the smallest site in the borough - 2,094 sq m. To double the number of pupils the Council's own plans show that they will have to annex an additional 2,000 sq m of the rec. The Council claims the school extension will not be built on 'open space' because it will be using the footprint of the existing pavilion and only 0.21% will be lost. This is not true the actual amount will be over 4%. Open Space is a **planning designation** and all of Dundonald Rec., including the pavilion, is designated Public Open Space in the borough's plans. Appropriating the pavilion

footprint and additional land for educational use means it will no longer be 'open space'.

At the last meeting Cllr Judge assured us of the independence of the planning department. He referred to Merton Council's Core Planning strategy which specifically supports the "protection and enhancement of open spaces".

Under the Covenant Dundonald Rec. has that protection now, a protection which has lasted for 118 years, not the 15 years offered by the planning department.

### **What about education – isn't that more important?**

The Council claim that Dundonald school must expand because the demand is local and cannot be met through other means.

### **Is demand really local?**

In Nov 2010 when trying to persuade Bishop Gilpin school to expand, the Council said that demand was in the north of the borough and local to that school. The Governors refused to take more than 1 bulge year. Just six months later the Council tells us that demand is around Dundonald School.

These are the facts: there are ten primary schools within a one mile radius of Dundonald. Six of these have expanded between 2007 and 2011. This is a 43% increase in the number of places for five year olds. Compare this with an increase in the birth rate of 30%. Doesn't this demonstrate that local demand has already been met?

The expansion of the catchment area to 780m for the bulge year is an admission of this. (Look at the Council's slide which shows a circle five times the size of the present catchment area). An expanded school would bring children in from as far away as 1,000 metres. These children are not really local to Dundonald school - they actually live nearer to other local schools - nearly every household in the borough is within 500m of a primary school.

But we also need to consider the two or three families a year who live in Herbert Road and Graham Road and who are refused a place at Dundonald despite it being their nearest school. Surely this is an argument for expansion – well, no. At the last meeting the Council admitted that there are 4 children from among the first 30 places offered who were admitted under the sibling rule but live over 1km away. The problem is caused by placing the sibling rule and parental choice higher than proximity. Many parents want this, but in reality this means that some lose out in the resulting lottery.

So why does the Council continue to insist there is 'demand'? It is because they are deliberately using 'demand' to mean the number of children whose parents **want** them to come to the school rather than the number who **need** to come to the school because it is nearest.

### **There are other options:**

Dundonald has already agreed to take a 'bulge year' in 2011, a challenging situation for staff and pupils, but which parents have been assured will not impact on the quality of schooling. There are other options for meeting the need for additional school places. What about a 'rotating bulge year' where the burden is shared across several schools? Or finding a satellite site for Dundonald? Or building a new school on a brownfield site? Or expanding other schools with larger sites in areas of real need?

### **What about the new community amenities which the Council is promising?**

The Council claims that the community will gain from the new amenities in the school building. But do we need them? The Government's Extended Schools initiative already encourages schools to extend opening hours to offer community facilities on-site in their existing buildings, for example hiring the school hall.

Particularly worrying is the Council's suggestion that we will be accessing money from the education budget to fund the new community facilities. Is this acceptable when we are told that the education budget is already inadequate and savings need to be made? Why not raise funds for Dundonald Rec. from other sources, of which there are many. Why not fix the disabled toilets and put a coat of paint on the pavilion instead of pulling it down?

We will be losing open space and losing community amenities – the new building does not have enough changing rooms for football or cricket teams to have separate secure facilities, there is no storage for regular users of the hall, the new hall is smaller. In all options the bowling green will go – and when it goes, so too will the full-time park keeper as he will have less to do. We will have an occasional visiting groundsman instead. Tasks such as cleaning and maintenance of the new building will fall to the school – their cleaners will have to clean the community toilets and changing rooms, for example.

And can we trust the council to deliver on promises? Their assurances over the provision of a new community hall in Wimbledon Park have still not been met after more than seven years leading to the Council being found guilty of Maladministration by the Local Government Ombudsman, and forced to pay a fine to Wimbledon Park Residents Association. Is that what we want here?

### **The idea of expanding Dundonald School onto the Rec. is simply not practical.**

The Council is unable to answer many questions put to them regarding the details of this plan. It is apparent that this hasn't been thought through.

The site is tiny - how can twice the number of pupils be educated in a school building that is only 50% bigger than the present one?

During the construction, which will take at least a year, would additional children have to be accommodated in Portacabins in the middle of a building site?

The children's playground and a large section of the Rec will be out of commission during the building work.

What about the increase in traffic caused by more pupils and teachers? Assurances which the Council gave about the expansion of Wimbledon Chase have already been shown to be false – and we will suffer more extreme problems because this site is much smaller with no parking facilities.

This is not just about short-term problems, it's about the long term. Another site can be found for a school building, but building on the rec. will show that Council have no regard for the law or the wishes of local residents. We want this valuable green space to be preserved for the majority of local residents and children in years to come. If you agree with us please say no to building on Dundonald Rec.