

Committee: Cabinet

Date: 19 September 2011

Agenda item: 11

Wards: All

Subject: Reference from the Children and Young People Overview and Scrutiny Panel: proposed expansion of Dundonald Primary School and impact on Dundonald Recreation Ground

Lead officer: Julia Regan, Head of Democracy Services

Lead member: Councillor Jeff Hanna, Chair of the Children and Young People Overview and Scrutiny Panel

Forward Plan reference number: tbc

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Reason for urgency: The Chair has agreed the submission of this report in order to inform Cabinet of the outcome of the Children and Young people Overview and Scrutiny panel pre-decision scrutiny meeting on 15 September 2011

Recommendations:

The Children and Young People Overview and Scrutiny Panel recommends that Cabinet

- A. Consider the views and comments made by the Panel, as set out in paragraph 2.34 onwards, when taking its decisions on the proposed expansion of Dundonald School.
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1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

1.1 A special meeting of the Children and Young People Scrutiny Panel was held on 15 September 2011 in order to scrutinise the proposed expansion of Dundonald Primary School and impact on Dundonald Recreation Ground, prior to a decision being taken by Cabinet on 19 September.

1.2 The purpose of this report is to:

- inform Cabinet of the outcome of pre-decision scrutiny of the proposed expansion of Dundonald School and impact on Dundonald Recreation Ground, undertaken by the Children and Young People Overview and Scrutiny Panel on 15 September 2011
- request that Cabinet takes the comments and recommendations from the Panel into account at its meeting on 19 September 2011 when taking its decisions on this issue.

2. DETAILS

Scrutiny process

- 2.1 At its meeting on 15 September 2011 the Children and Young People Overview and Scrutiny Panel discussed the report “proposed expansion of Dundonald Primary School and impact on Dundonald Recreation Ground“, prior to it being considered by the Cabinet .
- 2.2 Members of the Sustainable Communities Overview and Scrutiny Panel were invited to attend in relation to those issues which impact on that panel’s terms of reference.
- 2.3 The Chair of the Panel wrote to residents who had participated in the consultation and for whom contact details were available, inviting them to attend the meeting and inviting groups that wished to address the meeting to notify their intention to do so. 52 residents attended the meeting.

Evidence taking

- 2.4 Paul Ballatt, Head of Commissioning, Strategy and Performance, provided a brief introduction to the Cabinet report. He outlined the officer recommendations, described the background and set out the risks identified within the report. He stressed the enormous challenges posed by the increase in the child population in the borough and the consequent need to expand around half of the borough’s schools to accommodate these growing numbers. He stated that expansion of Dundonald Primary School had been included in the Council’s primary school expansion strategy, agreed by Cabinet on 6 December 2010. He added that Ofsted had found Dundonald to be an excellent school and that officers have every confidence in the school’s leadership team’s ability to accommodate extra pupils and maintain the current high standards. Lastly, he confirmed a technicality that the change of use may mean the council needs to seek a modification of the school covenant as well as that of the recreational ground.
- 2.5 Lorraine Maries and Paul Gibson were then invited to speak on behalf of the Protect Dundonald Rec Campaign Group. Lorraine Maries said that the Group is not opposed to school expansion in principle but that it would not be possible for Dundonald School to legally expand into the recreation ground due to a restrictive covenant. She urged the Council to find alternative school places elsewhere and quickly.
- 2.6 She stated that the consultation process had been flawed and that communications from the Council had not been open and transparent. In particular, the initial consultation in November 2010 on the principle of school expansion did not look at local issues but the second consultation document implied that there had been agreement to expand in to the recreation ground.
- 2.7 Lorraine Maries believes that some of the neutral and positive responses have been misclassified and should have been classified as negative. She also drew the panel’s attention to the petition against building on the recreation ground, signed by 2122 residents.
- 2.8 Lorraine Maries pointed out that all of the recreation ground, including the pavilion, is classified as open space in the borough’s plans and therefore should be protected. She contested the figure given in the Cabinet report of 100 square metres loss of open space, asserting that this would actually be closer to 2000 square metres.

- 2.9 Lorraine concluded by saying that the Restrictive Covenant is a key and substantial barrier to the plans to expand Dundonald School. The Campaign Group has received legal advice that the Upper Tribunal would be unlikely to agree to vary the Covenant to allow building on the recreation ground.
- 2.10 In response to questions from Panel members, Lorraine said that the legal advice she had received was that the Upper Tribunal rarely agrees applications when there hasn't been a significant change in land use or changes in the surrounding area. It is Lorraine Marie's view that no such changes apply in this case and so agreement to vary the covenant is unlikely to be given. She added that their legal advice indicated that the covenant can't be amended – the only options are to uphold or breach the covenant.
- 2.11 In response to further questions Lorraine confirmed that:
- the role of the Campaign Group is to protect the recreation ground
 - the Campaign Group is considering a number of options for opposing the expansion of the school into the recreation ground, including seeking a judicial review
 - it is important for children to go to local schools, but catchment area projections show that the proposed expansion would result in children coming to Dundonald School even though they live closer to other schools. Access to Dundonald School is difficult from the other side of Wimbledon.
 - The current pavilion is more than adequate for recreation ground users' needs
 - The sibling rule results in children going to schools at some distance from their homes. This is particularly so for popular schools.
 - Activities affected by the proposed expansion (in addition to bowling) are day time use of tennis courts during the school term, use of the community hall by cricket and football teams, altered perimeter would also affect joggers.
- 2.12 Councillor Suzanne Grocott, councillor for Dundonald Ward, addressed the Panel on behalf of the local residents who have contacted her. Councillor Grocott regularly observes residents enjoying a wide variety of activities in the recreation ground. She is also aware of the high demand for places at Dundonald School, which was voiced clearly at the public meeting that she attended.
- 2.13 The majority of emails and letters that Councillor Grocott has received are against the proposed expansion of the school if they are to use any of the land that is currently part of the recreation ground. She stated that the recreation ground is legally protected by the covenant and that overturning it would set a precedent for building on green space.
- 2.14 Councillor Grocott asserted that the Council is looking to expand Dundonald because it is an "outstanding school" and that if it were a failing school, the demand for places, (even though it would still be the most local school) would not be as great and that the Council would not be looking to expand it. It is her personal view that the decision to expand is, therefore, not out of necessity, but purely because it falls within the stated criteria for consideration.

- 2.15 Councillor Grocott referred to an article recently published in My Merton magazine, entitled "Merton working to ensure quality housing for all" which details a number of new developments all designed to attract families into Merton. The article describes Rowan as "the old school site". Her view is that housing is being prioritised without consideration for the inevitable increase in school places and that in the past decisions have been made to reduce school place availability.
- 2.16 In response to questions from Panel members, Councillor Grocott confirmed that she has been contacted by parents who couldn't get a place at Dundonald School, particularly in Graham Road; but that she has not received any representations from existing parents at Dundonald School.
- 2.17 The Chair then invited Panel members to question officers about the Cabinet report.
- 2.18 In response to questions, Sarah Willis, Senior Lawyer, stated that the legal advice received in relation to the restrictive covenant was summarised in the Cabinet report. She added that the issue of the covenant had been flagged up at an early stage and that advice had been taken from external counsel. Their advice was that an application to the Upper Tribunal to vary the covenant was the best way forward and that there is a good case for this variation. Advice received was that the Upper Tribunal has powers to modify a covenant, including when it is obstructing reasonable use of land and it is in the public interest to proceed. The process in this case is expected to take 6 to 12 months.
- 2.19 In response to a question about how confident he was that the Council would be successful at the Upper Tribunal, Paul Ballatt said that the legal advice received provides grounds for cautious optimism.
- 2.20 In response to a question about the deliverability of the proposed expansion given the time taken by application to the Upper Tribunal and the possibility of a judicial review, Sarah Willis stated that the time taken for the application to the Upper Tribunal had been factored in to the proposals. Any application for judicial review would be a separate process and the first stage would be for the court to consider whether there was a case to be answered. This stage would be relatively quick. Paul Ballatt added that a number of potential delays had been factored in and, if necessary, temporary arrangements would need to be made to accommodate these. These would need to be negotiated and would not be in the council's or school's best interests.
- 2.21 In response to a further question, Sarah Willis said that the cost of legal processes would be a small proportion of the total cost of the proposed expansion.
- 2.22 The Chair commented that the Panel should consider not only whether the consultation process had met legal requirements, but whether it had enabled the full range of public views to be expressed.
- 2.23 Paul Ballatt was questioned about the Council's consultation process. He stated that the Council had been open and transparent with objectors but that, even though it was widely publicised, it is never possible to reach everyone during a consultation process. Sarah Willis confirmed that the consultation process had met legal requirements.
- 2.24 Paul Ballatt agreed that there were lessons to be learned from the consultation process. He added that the interpretation of submissions was undertaken in good faith.
- 2.25 When asked what "Plan B" would be if the expansion at Dundonald School can not proceed, Paul Ballatt stated that officers would seek agreement with another school for expansion or, were a suitable site available at a suitable price, a new school.

- 2.26 Tom Procter, Service Manager - Contracts & School Organisation, was asked to comment on the Proctect Dundonald Rec Campaign Group's assertion that 2000 square metres of recreation ground land would be required. Tom said it was unclear how that figure had been reached and that the Council's plans show a building of similar footprint on the recreation ground to the existing one, and a proposed transfer of space from the recreation ground to the school of no more than 300 square metres. The tennis court area would also be enlarged to the benefit of the school and the local community.
- 2.27 When asked why Dundonald School has been chosen for expansion, Tom Procter said that all the possible alternative schools in the immediate vicinity had already been expanded or were planned to expand and there is still a shortage of places in the area. Yvette Stanley, Director of Children, Schools and Families, added that this is part of a wider expansion programme whereby 25-27 of the borough's 43 primary schools will expand. This will enable more children to go to their local school and will change the pattern of travel in the longer term, to include more children walking to school.
- 2.28 Doug Napier, Leisure and Culture Greenspaces Manager, was asked what sport and other activities currently available on the site would no longer be available. Doug replied that bowling could potentially be unavailable, though the Council is looking at alternative provision. Access to the community hall will depend on which option is taken forward. In response to a question about the impact that the changed facilities would have on football and cricket team, Doug said that the cricket teams would be the most affected in that they could potentially be required to take their teas within the community hall within the main school building and not within the sports pavilion under Option C. He confirmed that the teams had not been consulted directly to date.
- 2.29 Tom Procter was asked who would pay for the maintenance of the shared space. He replied that he envisaged a clear arrangement would be set out in writing. In response to a further question about how to guard against the school taking sole control of shared facilities in the future, Tom said that he would expect a legal agreement to be drawn up. Yvette Stanley added that thought had been given to safeguarding issues and that these had been satisfactorily resolved by other schools.
- 2.30 The Chair introduced Fiona Duffy, Headteacher and Duncan Russell, Chair of Governors of Dundonald Primary School, who had attended in order to answer questions from Panel members.
- 2.31 In response to a question, Fiona Duffy agreed that expansion to two forms of entry would provide additional development opportunities to staff and would help to retain experienced staff. She stated that expansion would not affect the school's core purpose, that her priority would be to maintain standards and that she was confident that this would be achieved.
- 2.32 Duncan Russell was asked how, if the expansion went ahead, the school would go about building bridges with those who had opposed the expansion. Duncan replied that they would seek to learn from the experience of other schools in similar situations. He would anticipate support from the local authority, particularly through the construction phase, in terms of communication with local residents.
- 2.33 Fiona Duffy stressed that the school would want to continue to have a good relationship with the local community. The governors are mindful of the need to strike a balance to ensure that buildings would be available for community use out of school hours.

Scrutiny comments and recommendations to Cabinet

- 2.34 Panel members shared their views and reached agreement on the comments and recommendations to be put forward for consideration by Cabinet meeting at its meeting on 19 September:
- 2.35 The Panel has listened to all the views put forward and recognises that this is not an easy issue on which to reach a decision. The Panel recognises the huge pressure on primary school places and the need to expand the borough's schools but also recognises the need to protect activities at the recreation ground.
- 2.36 The Panel recommends that Cabinet seek more information on the reputational and financial risks involved so that these can be taken into account in reaching its decision. In particular, that Cabinet seek clarity on the risks and timescales involved in seeking an amendment to the covenant and also in the event of a judicial review.
- 2.37 The Panel acknowledges that building work is disruptive and urges all concerned to seek to minimise this through careful planning
- 2.38 The Panel recommends that the school and the governing body work closely with the local community to make best use of facilities and to ensure that these are as convenient to local residents as possible.
- 2.39 The Panel recommends that the Council work with the school and the local community to find as much common ground as possible and to keep all concerned fully informed throughout.
- 2.40 The Panel is aware that there is a lot of opposition to the expansion of Dundonald School and accepts, with caution, officer assurances that there won't be further expansion onto the recreation ground.
- 2.41 The Panel recommends that every effort is made to minimise the impact on activities currently provided at Dundonald Recreation Ground so that local residents can continue to enjoy these in future.
- 2.42 The Panel recommends that the arrangements for the provision of community facilities is reviewed so that catering for football and cricket is better provided.
- 2.43 The Panel further recommends that Cabinet ensures that the strongest possible form of protection is provided for the remainder of the Dundonald Recreation Ground in order to keep it as a leisure facility for residents for the foreseeable future.

3. ALTERNATIVE OPTIONS

- 3.1 None - Cabinet is required under the terms of the constitution to receive, consider and respond to references from overview and scrutiny.

4. CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1 As contained in the substantive report to Cabinet – Forward Plan number 1074.

5. FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 5.1 None for the purposes of this report.

6. LEGAL AND STATUTORY IMPLICATIONS

6.1 Cabinet is required under the terms of the constitution to receive, consider and respond to references from overview and scrutiny. The Local Government and Public Involvement in Health Act 2007 requires Cabinet to respond to reports and recommendations made by scrutiny committees within two months of written notice being given.

7. HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

7.1 None for the purposes of this report.

8. CRIME AND DISORDER IMPLICATIONS

8.1 None for the purposes of this report.

9. RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

9.1 None for the purposes of this report.

10. APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

10.1 None

11. BACKGROUND PAPERS

11.1 Report to Cabinet 19 September 2011 “proposed expansion of Dundonald Primary School and impact on Dundonald Recreation Ground”.

11.2 Papers laid round at Children and Young people Overview and Scrutiny Panel meeting on 15 September (will be published on Council’s website alongside documents for the meeting):

- two plans – existing layout of Dundonald School and Dundonald Recreation Ground and layout under Option C of the consultation
- letter to Councillor Jeff Hanna from Susan Rosser, local resident
- Five Reasons – why Merton Council cannot build on Dundonald Recreation Ground – Protect Dundonald Rec.
- Email to Councillor Peter Walker from Enid Humfrey, local resident
- Email from Julia Waters, Secondary Headteacher representative, Children and Young people Overview and Scrutiny Panel
- Email to Council’s Democratic Services team from Sandy Cowling, local resident