

Committee: Cabinet

Date: 22 June 2021

Agenda item:

Wards:

Subject: Expansion of Merton Medical Education Services and future of Lavender Nursery

Lead officer: Jane McSherry, Director of Children, Schools and Families

Cabinet Member: Eleanor Stringer, Deputy Leader and Cabinet Member for Children and Education

Contact officers: Tom Procter, Head of Contracts and School Organisation

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Recommendations:

- A. To note the significant number of objections in the consultation to expand Merton Medical Education Services by moving into Lavender (London Road) Nursery and that, for the reasons outlined in this paper, the Lavender (London Road) Nursery building remains the only affordable option to house Merton Medical Education Services and provide sufficient provision for the borough's growing number of children with medical needs.
 - B. To engage stakeholders on two options to implement from January 2022: The first, to continue with the council's proposal as per the January 2021 consultation proposal. The second, to proceed with an augmented option that will provide a continuation of the Lavender Nursery full-time day care provision in other Children, Schools and Families building(s) in Lavender Ward in addition to re-providing the sessional places for children aged 2, thus maintaining the service in alternative premises within reasonable proximity to the current site.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. From 25 January to 22 February 2021 the council undertook a consultation to expand Melbury Medical provision into Lavender Nursery, and so move the existing provision from this site and to no longer provide fee paying full-time day care at Lavender Nursery. This report outlines the consultation responses and proposed next steps.
- 1.2. There was opposition to this plan, but the advice of officers remains that there are enough fee paying early years childcare/early education places, and sufficient spare nursery capacity in the school sector to provide for any growth in demand. There also remains no alternative option to provide for children with medical needs without prohibitive costs for the council of building on a new site or a substandard and unequal offer for these children, such as relying on home tuition.
- 1.3. The consultation showed there is a preference from some parents for the council to have a dedicated council fee paying nursery for working parents. Officers looked at alternative options to house the Lavender fee paying nursery provision and propose that the council consults stakeholders on an

augmented proposal that will provide some full daycare places nearby in addition to re-providing the sessional places for children aged 2. Since the strategic aim of the council is to provide for families most in need this should have an admissions policy based on working household income and presenting need i.e. SEND (Special Educational Needs and Disabilities).

2 DETAILS

2.1. Background to the consultation

Need for additional places for children with medical needs

- 2.2. Part of Melbury College, Merton Medical Education Services offer high quality, bespoke education provision for highly vulnerable students who live in Merton and who are unable to attend mainstream school because of medical and/ or mental health needs.
- 2.3. Students can be referred by their mainstream school if they have, or will have 15 days of absence from school because of their medical condition based on medical evidence from a hospital consultant or CAMHS (Child and Adolescent Mental Health Services) professionals.
- 2.4. Merton Medical Education Services offer home tuition, in-community provision, on-line learning, a placement at its specialist provision (previously Canterbury Road campus) or a combination of some/all of these, depending upon the individual needs of the student. SENDIS (Special Education Needs Integrated Service) also refers students with EHCP's if they are in Key Stage 4 (national year groups 10 and 11), as the most suitable provision to support these vulnerable pupils.
- 2.5. The number of pupils referred to Merton Medical Education Services has increased year on year. Last year, 63 students benefitted from the services. However, the limited accommodation at the Canterbury Road campus only allows up to 20 students to be accommodated at any one time, with pupils requiring the support of small class groups of no more than 10. There has therefore needed to be an over reliance on home tuition, and only KS4 pupils on site. Numbers are forecast to increase, both as the general secondary age population increases, and the increase in children with mental health needs that are unable to remain in mainstream secondary school.
- 2.6. Due to lack of space at Canterbury Road, Merton Medical Education Services temporarily moved to Worsfold House, Church Road, Mitcham, in September 2020. However, this is not suitable as a permanent location. The building is too large and unsuitable beyond the short term, and the site has been earmarked by the council for housing, including affordable housing, thereby generating a capital receipt that would support the provision of services and minimise future services cuts.
- 2.7. Alternative site solutions for medical provision
- 2.8. Officers have considered the potential sites currently within Children, Schools and Families management that could provide for additional SEND provision.

- 2.9. There are only two buildings currently not in permanent use. Firstly, Whatley Avenue, SW20 (former Adult Education building recently used temporarily by Harris Academy Wimbledon). This has been earmarked to provide specialist provision, catering for children with ASD (Autism Spectrum Disorder), for approximately 80-90 pupils. Secondly, Worsfold House. However, as referenced in paragraph 2.6 this is not suitable as a permanent location and would have a significant impact on the council's future finances.
- 2.10. There are primary schools with surplus places but it would be challenging to have a distinct area that could be a provision operated by another provider, and especially to provide for secondary aged children on a primary school site. However, there is space to consider expanding nursery places/provision according to need, where there are schools with surplus accommodation
- 2.11. The network of Children's Centre buildings and Youth Centres have been considered but had to be discounted as too small. However, the exception identified was Lavender (London Road) Nursery, a local authority run childcare setting that is a discretionary service. While it was discounted for Special Educational ASD provision as being too small for the size of school needed, it is suitable to be considered for the medical provision.
- 2.12. Lavender Nursery could be adapted to provide for at least 60 children for the medical provision at a fraction of the cost compared to any other option.
- Lavender Nursery
- 2.13. Lavender Nursery opened in 2004 as part of Children's Centre provision under the government's Sure Start programme. It was opened with Lavender Steers Mead, which provides the main Children's Centre activities, support services and co-location with Merton's Community Health provider, with Lavender Nursery providing early education and childcare for 2 – 5 year olds. In response to new statutory duties over the past 15 years, the early education and childcare provision, including delivery of free early education places, across the borough has developed and expanded significantly during this time.
- 2.14. Lavender Nursery (London Road) currently provides up to 80 part-time, term-time only places for 2-year-olds who are eligible for free early education, and up to 48 full-time all-year-round places for children aged 2, 3 and 4 for fee-paying families
- 2.15. Based on the current roll for fee paying families (May 2021 figures), from September 2021 there will be:
- 31 children who will go to school reception class in September 2021 – i.e. would be leaving by the end of August 2021
 - 20 children who would have ordinarily had the option to remain at Lavender
- 2.16. Analysis prior to consultation identified that provision could be provided through other means as follows:
- the private, voluntary, or independent sector, where within a 1 mile distance there are 9 private all-year-round full day care nurseries with good or outstanding Ofsted inspections, or waiting for their first inspection

- nursery classes in primary schools, where within a 2 mile distance there are 14 primary schools with nursery classes, some offering 30 hour funded places for 3 and 4-year-olds. The council would continue to work with schools wanting to offer the 30 hours (extended entitlement) to meet the needs of families, as well as support schools to expand or set up wrap around provision around the school day and in the holidays.
 - the childminding sector where, within a mile there are 20 to 25 childminders
- 2.17. It was recognised that there are generally fewer places available via the free childcare scheme for eligible 2-year-olds, and the council would be able to relocate the existing council-run 80 places to the following three designated children centre sites, whilst continuing to support sufficiency across the whole childcare market:
- Lavender Steers Mead Children’s Centre CR4 3HL
 - Acacia Children’s Centre CR4 1SD
 - Abbey Children’s Centre SW19 2JY.
- 2.18. The council’s Childcare Sufficiency Assessment report shows that the population of Merton’s under-fives has decreased in recent years and the forecast from the GLA demography unit is for it to continue to decrease over the next five years. This is likely to reduce the demand for childcare. However, the secondary aged population has increased substantially and is forecast to still modestly increase over the next five years
- 2.19. The impact of Covid on supply and demand of childcare and early education for under 5s remains unclear, however, headcount data in the local PVI sector shows a small reduction in the take up of funded places across all free entitlements between January 2020 and January 2021.

Council consultation

- 2.20. Based on the above, the council undertook a public consultation from 25 January 2021 to 22 February 2021 with the following proposals:
- Expand Merton Education Services into Lavender (London Road) Nursery, thus increasing the capacity to at least 60 places,
 - Close the Lavender Nursery provision (full working day, fee-paying provision (i.e. 48 full-time places)
 - Re-provide the 80 part-time, term-time free places for eligible 2-year-olds currently at Lavender (London Road) to Lavender Steers Mead, Acacia and Abbey Children’s Centres

Summary of consultation responses

- 2.21. 240 responses were received, of which 19 were supportive of the proposal and 221 were not supportive/opposed the proposal.
- 2.22. A summary of all 240 responses is provided in appendix 1 to this paper. The paragraphs below outline all the issues raised.

Specific concerns raised by parties opposing the proposal

- 2.23. The Lavender Nursery Parents Association [LNPA] is a group of parents and carers of children at the Nursery, former pupils, and children on the waiting list. They provided a 13 page response outlining that the LNPA is unanimously opposed to the proposal – it believes the council’s proposal was poorly argued, lacked evidence, and it would be short-sighted and reactionary of the council to close a highly effective, safe, purposeful, happy and affordable Early Years Foundation Stage (EYFS) childcare service, with experienced staff, which would subsequently leave insufficient, inadequate provisions for those that the area intends to attract over the next few years. They state that the current Lavender Nursery site, was a purpose-built award winning site designed specifically for the under 5’s. The single-storey premises currently comprised 4 separate rooms, 4 bathrooms all designed with low level accessibility facilities specifically for young people. The substantial outdoor space lends itself to allow children to fully develop in accordance with the EYFS curriculum
- 2.24. The full response is provided in appendix 1 to this paper.
- 2.25. The specific points can be separated into four key categories, plus ancillary points.
- 2.26. ***The alternative childcare options proposed by Merton Council were not comparable to that offered by Lavender.***

The LNPA response stated:

- The view that working families required full-time childcare from 7.45-6pm and all year round – alternative options did not provide for this, especially for 2-3 year old children
- Nursery classes within primary schools were only for children aged 3-4 years, with no options for the children aged 2-3 years currently provided by Lavender Nursery. Places were not available until the term after the child turns 3. Lavender Nursery is open from 7.45-6pm providing parents with the ability to work a standard full-time working day, while their child is at nursery
- There were a number of childminders in the area, however the services provided by childminders vs nurseries were not comparable
- Of the proposed locations Steers Mead Children’s Centre was the only one within walking distance of Lavender (10mins walk). Acacia Children’s Centre (20mins walk) and Abbey Children’s Centre (30mins walk) were too far for families to travel by foot given the round trip journeys would be between 40-60 minutes from Lavender.
- The requirement to fill 80 funded places could not be met by the proposal. Acacia and Abbey offered 24 and 20 places respectively and were currently full. Steers Mead would need to be fully refurbished in order to function as a nursery and would only have the capacity for an additional 29 spaces
- The quality of EYFS childcare provision and the suitability of the settings offered was not comparable to that offered by the Lavender Nursery and therefore the local authority would not be fulfilling the consultation’s requirements to support families in sourcing alternative suitable childcare provision

- The LNPA highlighted that there were around 40 children on the waiting list and more who would be unable to join this waiting list when it was closed in November 2020
- 2.27. ***The alternative childcare options would charge higher fees*** - The LNPA response stated that families would be forced into financial difficulty as a result of high fees charged by independent nurseries and childminders and impact of uprooting those children to alternative childcare providers. While the LNPA acknowledged there are other nurseries within 1 mile of Lavender they viewed there were many reasons why parents had chosen to send their child/children to Lavender and not those nurseries. Key factors within this were price and location. A table was included showing the fees at Lavender for under 3s, at £1,174 a month, were about £500 less than some other nurseries in the area.
- 2.28. ***There would be demand now and in the future for Lavender*** - The LNPA response stated that in November 2020 there were 40 families on the formal waiting list, it then closed due to Covid, but LNPA estimated there could be potential for approximately 80-100 waiting families. The council's proposal in its view failed to take into account the continued demand for spaces at Lavender Nursery. In the LNPA's view the council's Childcare Sufficiency in Merton Annual Report [2019 & 2020] clearly identified that there was already a deficit of funded early education for 2-year-olds, within the wards surrounding the nursery - although the council's Childcare Sufficiency Assessment report shows that the population of Merton's under-fives is decreasing, the LNPA believed that this would be unlikely to be the case given the council's commitment to regeneration in the local area, and anecdotal evidence of a Covid 'baby boom' on the horizon
- 2.29. ***There would be no justification in the group's view for the expansion of the MMES provision should also require the closure of the Lavender Nursery service*** - Whilst the LNPA appreciated the council's position in needing to find an alternative site for MMES, it did not understand why this must come at the enormous cost of the closure of Lavender Nursery service; in its view the council's consultation document failed to detail adequate information on alternative sites for the relocation of Merton Medical Educational Services e.g. a viability report, and specifically why not use Whatley Avenue – this had been allocated for SEN but only for 90 places, and the LNPA believes it has enough capacity for both SEN and MMES.
- 2.30. ***Ancillary issues*** – In the group's view, the proposal consistently contravened the borough's Statement of Community Involvement [SCI] June 2020 and it was LNPA's belief that the council had been undermining the financial viability of the nursery by cutting back the intake of the nursery in previous years, in order to be able to justify its closure now. Tamworth Recreation ground playground in its view lent itself well to its location next to Lavender Nursery. The LA's commitment to providing safe outdoor space for all might in its view be compromised by the repositioning of MMES to the Lavender Nursery site
- 2.31. The council also received 219 individual responses against the proposal including from current parents, past parents, prospective parents and staff. Each one is summarised in appendix 1 to this paper. Most covered the same

issues as The LNPA response summarised above. The following additional points were made by respondents:

- Some respondents stated that there was a high percentage of children with SEN that were recommended to attend due to the strategies that were put in place to help these children
- A respondent stated that the proposed centre would bring more trouble to the area and hanging around the play park – less than ideal for many local residents
- Some respondents stated that the building was funded by Sure Start to provide early years intervention for 25 years and was only in its 17th year. They said it was a legacy of the previous Labour government's work towards eliminating child poverty
- Some respondents states that without access to early years childcare some parents might lose their jobs
- The paper to the Scrutiny Panel indicated that an Equality Impact Assessment had not been carried. Some respondents argued that the proposals should be suspended until this had been done.
- Some respondents stated that closure could affect up to 80 children as the 48 figure quoted was full time (equivalent) places and some children attend part time. They cited limited alternative options, unsettling for children, long waiting list, amazing staff and good SEN provision
- Some respondents suggested it would minimise disruption to children by delaying the changes for an academic year or looking for an alternative site for MMES
- Some respondents suggested that given the concerns of parents and local community re the closure of the nursery, could the nursery be located elsewhere in the local community, e.g. a nearby school with a falling roll?

2.32. Siobhain McDonagh MP raised objections regarding the proposals, stating that she supported MMES expansion but not at the cost of another excellent children's service. She said it was a highly valued service with extremely skilled staff, consistently recommended by parents whose children attended the nursery, as demonstrated by the waiting list. She argued that the vast majority were from local families and she was concerned the proposal would exclude most of the children from any council run scheme and would force those families to access childcare that is notably more expensive. She cited new research from City Hall that she said revealed that almost two-thirds of nurseries were at risk of closure in the next year due to the financial impact of the pandemic. She believed it would be inconceivable, in light of this research, to consider closing such a well-loved and high performing nursery in an area with such high demand for this service. She asked the Council to reconsider, keep the nursery open and review alternative accommodation for the proposed MMES service.

2.33. Two ward councillors for Lavender Fields suggested the council look at alternative sites for MMES, e.g. Whatley Avenue, Phipps Bridge Youth Centre. They argued it was the last remaining council-maintained nursery in Merton and provided affordable, all-year-round EYFS services to children in

Mitcham with no comparable alternatives. In their view, it provided a community service that was accessible to a wide mix of families and that it would be short-sighted to close the only council nursery when lots of private nurseries may themselves close.

2.34. **Support**

2.35. The 19 supportive responses were generally from people who had used or were involved with the Merton Medical Education Services (MMES). A good example was a parent who stated that MMES provided a lifeline for her daughter who struggled with anorexia and depression for 2 years and where mainstream school has made her feel suicidal.

2.36. The responses stated:

- How MMES students were extremely vulnerable and in need of intensive support and care from different agencies to help them to reconnect and find a place in the community. They needed a safe, permanent, inviting environment with an outdoor space. Current facilities were temporary and not fit for purpose, in respondents' views.
- The number of pupils who could not manage in mainstream schools was increasing and it was essential that a permanent and safe building with outdoor space was found.
- Lavender was a safe and ideal building to house a medical support school. It had the right facilities to enhance the quality of support and experiences offered by this service, which was vital to the whole community.

Response from the council to the consultation and the proposed way forward.

2.37. The proposal from the council demonstrated strong feelings that the council was taking away a facility that was valued. However, the council has a responsibility to provide for its most vulnerable children and young people. This section of the report therefore addresses the four key points made by Lavender Nursery Parents Association:

- Its view that alternative options to house MMES should be considered
- Its view that alternative childcare options being proposed by Merton Council were not comparable to that offered by Lavender
- Its view that the alternative childcare options would charge higher fees
- Its view that there would be demand now and in the future for Lavender

2.38. **Review of alternative options to house Merton Medical Education Services**

2.39. Three questions arose from the consultation on alternatives to Lavender Nursery:

- Could MMES be located at Whatley Avenue, in addition to the planned special school provision?
 - Could MMES stay where they are at Worsfold House, either permanently or for an extended period, of circa two years?
 - Could MMES be located at Phipps Bridge Youth Centre?
- 2.40. Appendix 2 provides the original site search and reviews these options and their viability. In summary:
- 2.41. *Whatley Avenue:* The case to use Whatley Avenue for a special school with a specialism to provide for ASD (Autism Spectrum Disorder) children was agreed by the council's Corporate Management Team in March 2020, but progression of the project was delayed by the Covid period. A report is presented to this Cabinet on 22 June 2021.
- 2.42. The case for additional special school provision is outlined in the Cabinet report and summarised in appendix 2. The Whatley Avenue special school project is key to providing as many state special school places as possible to provide local provision.
- 2.43. It is clear that the council can, and needs to fill the Whatley Avenue building as a special school. In addition to the benefits of providing good quality local special school provision, the cost avoidance from 80 maintained places compared to the alternative of placement in the independent sector is circa £1.6 million per annum, so £8 million over 5 years.
- 2.44. Whatley Avenue has a relatively small amount of space for outside play for a special school, and to enable sufficient space it will be necessary to dismantle a temporary building at the site. There is not the site space to add a building on the site for another purpose e.g. MMES.
- 2.45. *Worsfold House:* Using the Worsfold House site permanently has been discounted for the following reasons:
- 2.46. The Worsfold House site has been identified as a site for housing, with a capital receipt attached to its sale. If it is kept by the council, this capital receipt would be lost and the council would need to find offsetting savings from other services, including Children, Schools and Families, as would the offsetting savings from the provision of any affordable housing provided at the site, which would no longer be achieved.
- 2.47. The Worsfold House building was considered for school use (for Cricket Green) a few years ago and design consultants put significant effort into trying to make it work. However, the building is built as offices with only a small number of classroom sized spaces. The conclusion then was that it realistically needed to be knocked down and re-built for permanent school use. This remains the case.
- 2.48. While the DVS valuation has to remain confidential, the council can say in an open paper that the total cost of this option in new build construction and lost capital receipt is £5-10 million.
- 2.49. The building was converted at a low cost for a short period and provides a poor quality environment in what is essentially a disused office block with

toilets liable to flooding, an outdated and unreliable lighting system, windows without safety glass and inadequate heating system.

- 2.50. The building was converted to only provide for 40 pupils and cannot be easily extended to 60 children to meet demand expected following the Covid period
- 2.51. It should also be recognised that a new build option would take considerable time to design and build, and so would delay the Merton Medical Education Service requirements by approximately two years.
- 2.52. *Phipps Bridge Youth centre* – This building is substantially too small to house the provision required for MMES and is an open youth centre providing support for young people.

The alternative childcare options being proposed by Merton Council are not comparable to that offered by Lavender

The alternative childcare options charge higher fees

There is demand now and in the future for Lavender

- 2.53. With regard to 2-year old funded places the consultation offered the same number of part time places (80) at Lavender Steers Mead Children's Centre CR4 3HL (40), Acacia Children's Centre CR4 1SD (20) and Abbey Children's Centre SW19 2JY (20). Half the places are 9 minutes' walk from London Road and, based on the current intakes, parents with children accessing 2-year old funded places will generally not need to travel significantly further under this change. Some existing parents are due to move to new local provision as their child becomes 3, most commonly to school nurseries.
- 2.54. With regard to full-time childcare places it is acknowledged that Lavender Nursery charges lower fees than some alternative providers in the local PVI (private and voluntary and independent) sector. This is only possible because Lavender (London Road) nursery is subsidised both directly and indirectly by the council. Lavender nursery is an exception in the council in providing subsidised childcare for a very small number of parents yet its admissions policy is not based on affordability.
- 2.55. There are a number of central government sources of help for parents with their childcare costs, and these are mostly based on household income. For the many Merton parents accessing childcare services across the mixed market of providers some will be eligible for this financial support and as such this reduces the overall costs to the parents (hence they will not be paying the full amounts on the published fees). In Merton, fees do vary, broadly with higher costs in the west and towards the north of the borough and lower costs in the east and towards the south of the borough. The nurseries in Colliers Wood, which are within a mile of Lavender, are significantly more expensive than the nurseries in the other neighbouring wards, also within a mile.
- 2.56. The local nurseries in Merton (and there are also additional nurseries in the neighbouring borough of Wandsworth) are comparable in terms of delivering free funded early education, following the Early Years Foundation Stage (EYFS) statutory framework (the standards that school and childcare

providers, including childminders, must meet for the learning, development and care of children from birth to 5) and registering and being inspected by Ofsted under the EYFS framework.

- 2.57. Of the 9 full day care nurseries in the Mitcham area, 2 are outstanding, 4 are good and 3 are yet to be inspected. All are open for a minimum of 10 hours. Lavender nursery is graded as good, and is open for 10 hours and 15 minutes a day.
- 2.58. It remains the case that, due to the decrease in the 0-3 child population over the past 5 years, there are significant surplus places in Merton primary schools, and there is physical capacity to provide for demand as required. It is understood that some families need more than the 30 hours some schools currently offer, however some schools do already offer wraparound for breakfast, after schools and holidays, which is often at an affordable rate in comparison to private day nurseries, and at a comparable rate with Lavender nursery.
- 2.59. A school nursery place can be used with wraparound care provided by a childminder or through an after-school provision. In this instance the total cost to parents is more comparable with Lavender nursery fees for 3 and 4 year old places.
- 2.60. The council has a duty to secure, as far as reasonably practicable, sufficiency of childcare across the borough, working in partnership with all providers. The statutory duty allows councils to provide the childcare themselves if there is no other provider willing to do so or the council considers in all the circumstances, that it is appropriate to do so. The current market mix of available places and access to the range of providers across the local area, indicates that there are alternative providers willing (and able) to deliver full day care places for families. Based on existing analysis, officers consider that it is currently appropriate to provide sessional childcare/early education for children who are more vulnerable to poor early years outcomes based on eligibility criteria for the government funded 2 year old free nursery places.
- 2.61. However, the strength of feeling from the consultation is recognised, and particularly in relation to parents with existing children in Lavender Nursery.

Can parents' concerns be resolved in other ways?

- 2.62. Officers have therefore considered whether there are other ways to provide childcare options comparable to the Lavender Nursery service, with similar fees, to satisfy demand in this neighbourhood. The simplest solution would be to retain the existing Lavender Nursery service, its staff and its intake, in other premises in close proximity. Officers have therefore investigated the option of providing a nursery service in another building. This would be smaller, to recognise a more realistic projection of demand within the priority cohort (24 FTE rather than the present 48 FTE), and can be provided at either Lavender Steers Mead or Bond Road Centre, which are both in Lavender Fields ward and a 10 minute walk from the current site. Given that these buildings were already providing services for young children, the buildings can be adapted for a relatively small cost, especially in relation to

the costs that would otherwise be needed for MMES. The issues in relation to these two alternatives are as follows:

- 24 FTE and 40 PTE nursery places at Lavender Steers Mead – some services currently at Steers Mead) could be relocated
- 24 FTE and 40 PTE nursery places at Bond Road Centre – Planned office areas for the Family Wellbeing Service are converted for nursery use and staff are able to use other office facilities in the council including Children’s Centres under the new approaches to field working for Council staff in response to Covid 19

2.63. Under either option the nursery would aim to provide for existing children at Lavender Nursery and those on the waiting list (depending on patterns of take up etc). However, for separate reasons already outlined, in the future, full day care places will be prioritised toward lower income working households with families that are eligible for 2 year funding under working household income criteria and those eligible due to other criteria i.e. working families whereby children are looked after, children who have left care and are in particular circumstances, and SEND (all aged 2 – 3).

It is therefore recommended that the option of providing a 24 FTE nursery provision at either Bond Road Centre or Steers Mead is discussed with parents currently at Lavender Nursery, or on the waiting list. Staff and unions will also be kept informed prior to any decision and formal consultation in line with the council’s HR policy.

3 ALTERNATIVE OPTIONS

3.1. The main body of this paper has considered the options and the reasons for them. These are broadly (1) the status quo (2) As per the January 2021 consultation, or (3) A new option to provide a smaller full day care provision. The recommendation of this paper is that Cabinet give further consideration to options 2 and 3.

4 CONSULTATION UNDERTAKEN OR PROPOSED

4.1. A consultation was undertaken in January/February 2021. It is proposed that there is now further discussion with stakeholders as outlined above.

5 TIMETABLE

5.1. The original consultation proposed changes from 1 September 2021. It is now proposed that the Lavender (London Road) Nursery site moves from its current provision at the end of December 2021, with the replacement provision starting in January 2022.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

6.1. Officers report that the cost of moving MMES into Lavender (London Road) Nursery and adapting its use and changes to other provision to re-house Lavender Nursery Services can be undertaken within the £600,000 contained in the council’s capital programme. The report outlines that any alternative that can provide a good quality building for MMES would require a new build and the loss of a capital receipt, The DVS valuation information to the council has to remain confidential, but in this open Cabinet report it

can be stated that the total cost of this option at Worsfold House in new build construction and lost capital receipt is within the band of £5-10 million.

- 6.2. The council's ongoing expenditure on Lavender Nursery is greater than the income received. The proposal from February 2021 could therefore have contributed to council savings although, if the proposal were to have gone ahead, redundancies would have been anticipated, with the associated costs for this. The revised option of retaining a full day care nursery at a nearby site would mean an ongoing council subsidy will still be required, and fewer redundancy payments as the majority of the nursery places will be re-provided elsewhere. The specification staffing implications will be set out in the staffing consultation after Cabinet agrees the final option.
- 6.3. While DfE grant was used to build the original Sure Start centre, the experience of councils who have re-purposed buildings is that no money is clawed back if it is continued to be used for Education purposes.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. The Council has a duty under section 19 of the Education Act 1996 to make arrangements for the provision of suitable education at school or otherwise than at school for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them.
- 7.2. Lavender Nursery is provided as part of the Sure Start/children's centre provision made by the Council under the Childcare Act 2006. The Council has duties under the Act to make arrangements for sufficient provision of children's centres to meet local need (section 5A). The Council also has a duty under section 6 of the Act to secure, so far as is reasonably practicable, that the provision of childcare (whether or not by them) is sufficient to meet the requirements of parents in their area who require childcare in order to enable them to take up, or remain in, work, or to undertake education or training which could reasonably be expected to assist them to obtain work.
- 7.3. Under section 5D of the Childcare Act, a local authority must secure that such consultation as they think appropriate is carried out before any significant change is made in the services provided through a children's centre; and before anything is done that would result in a children's centre ceasing to be a children's centre. A change in the manner in which, or the location at which, services are provided is to be treated as a change in the services for this purpose.
- 7.4. In discharging its duties in relation to children's centres, the Council must have regard to statutory guidance. This advises that
- “The consultation should explain how the local authority will continue to meet the needs of families with children under five as part of any reorganisation of services. It should also be clear how respondents' views can be made known and adequate time should be allowed for those wishing to respond. Decisions following consultation should be announced publically. This should explain why decisions were taken.”
- “A local authority should not close an existing children's centre site in any reorganisation of provision unless they can demonstrate that, where they decide to close a children's centre site, the outcomes for children,

particularly the most disadvantaged, would not be adversely affected and will not compromise the duty to have sufficient children's centres to meet local need. The starting point should therefore be a presumption against the closure of children's centres; and should take into account the views of local families and communities in deciding what is sufficient children's centre provision."

- 7.5. It is considered that the consultation in January/February 2021 together with the further proposed engagement of stakeholders meets the requirements for consultation under section 5D of the Childcare Act. As with any consultation, the Council must consult when proposals are at a formative stage; sufficient information must be given to enable intelligent consideration and response by consultees; adequate time must be given for consideration and response; and the product of consultation must be conscientiously taken into account in finalising any proposals. In making a decision, the Council must conscientiously consider the outcome of consultation that has taken place and its duties under the Equality Act. The Council is required by the Equality Act to have due regard to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act and to advance equality of opportunity and foster good relations between those who share a 'protected characteristic' under the Act and those who do not share a protected characteristic. A 'protected characteristic' is defined in the Act as age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The Council must also ensure that its functions are discharged having regard to the need to safeguard and promote the welfare of children under section 11 of the Children Act 2004.
- 7.6. The DfE is able to claw back funding when an asset funded wholly or partly by the DfE Sure Start programme is disposed of, or the asset is no longer used to meet the aims and objectives consistent with the Sure Start Early Years and Childcare Grant (SSEYCG). However, the council can seek approval from the DfE, and subject to this prior approval the claw-back may be waived or deferred where an asset continues to be used for a similar purpose consistent with the aims of the grant.
- 7.7. The Lavender Nursery site's land is a charity trust and Merton Council is the Trustee. The proposals for the change of use for this building does not change any issues in this respect. However, there are historic issues in relation to the nursery use or any other education use in compliance with this Trust that are currently being considered.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. An Equality Analysis is provided as appendix 3. The summary is as follows:
- 8.2. The purpose of the proposal is because site searches showed that the displacement of Lavender Nursery was the only affordable and timely means to provide for some of the most vulnerable children in Merton with protective characteristics and for whom we have a statutory duty to provide education. Providing for these children is a key council priority to help vulnerable groups

to achieve. The negative impact is displacing the Lavender Nursery including people with protective characteristics consistent with the area it serves.

- 8.3. The council's proposals, including changes after the consultation, do much to mitigate the potential impact from displacing Lavender Nursery by directly providing childcare in other locations in the local area. However, parents and children including BAME, women and on a low income will need to move sites for their nursery provision and there are fewer full time day-care provision places for those who pay.
- 8.4. The plan seek to mitigates these issues by ensuring the smaller number of places will have an admissions policy giving priority to lower income groups and SEND, and to ensure the transformation to the new arrangements is handled as professionally as possible to ensure no one is displaced and there are few if any compulsory redundancies and if so efforts are made to find alternative jobs in the sector, with a specific Equality Analysis undertake at this time.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. No specific implications. It is not considered an issue that a small number of secondary age children will be passing a playground on their way to their provision.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. The greatest potential risk of this proposal is that there will be insufficient nursery places, and the council not therefore meeting its sufficiency duty. However, as outlined in the main body of the report, officers view is that there is sufficient provision and there is substantial spare capacity in school nurseries to meet any unforeseen increase in need in addition to the PVI sector.

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

- Appendix 1 – Consultation responses
- Appendix 2 – Site search
- Appendix 3 - Equality analysis

12 BACKGROUND PAPERS

- 12.1. Children and Young People Overview and Scrutiny Panel paper 10 February 2020

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