

	<p>Children, Education, Libraries and Safeguarding Committee</p> <p>9th March 2015</p>
<p>Title</p>	<p>Framework for considering applications from independent schools applying to move into the maintained sector</p>
<p>Report of</p>	<p>Commissioning Director Children and Young People</p>
<p>Wards</p>	<p>All</p>
<p>Status</p>	<p>Public</p>
<p>Enclosures</p>	<p>Appendix A – Barnet framework for local authority decision making in relation to independent schools seeking to move to the maintained sector</p>
<p>Officer Contact Details</p>	<p>Val White, Interim Commissioning Director Children and Young People val.white@barnet.gov.uk 020 8359 7036</p> <p>Alison Dawes, Head of Education Partnerships and Commercial Services, Children’s Service. alison.dawes@barnet.gov.uk 020 8359 7698</p>
<p>Summary</p>	
<p>Legislation allows independent schools to move into the maintained sector and the local authority is the decision maker for such applications.</p> <p>The Department for Education has published guidance outlining the Department’s expectations about what local authorities need to consider in reaching a decision. This paper proposes a local framework that sets out how the council will apply the guidance. The proposed framework is intended to assist the council in considering applications and to assist independent schools as they prepare their applications.</p>	

Recommendations

- 1. That the Children, Education, Libraries and Safeguarding Committee approve the framework for use by the Children, Education, Libraries and Safeguarding Committee in considering applications from independent schools seeking to open a new maintained school to replace an independent school.**

1. WHY THIS REPORT IS NEEDED

- 1.1 In recent years, a number of independent schools have converted into maintained schools in Barnet. Working in partnership with the council over a number of years to prepare a robust application, Beit Shvidler moved into new premises and opened a new maintained school to replace the independent school and Sacks Morasha followed suit, located in newly acquired and refurbished premises. During the last year, several more independent schools in Barnet have expressed an interest in seeking to open new maintained schools to replace the independent school and this report proposes a framework for considering such applications.
- 1.2 In general, all new state funded schools should be opened as academies, however there are a number of exceptions. These include proposals to open new voluntary aided schools and proposals to replace existing independent schools with new foundation or voluntary controlled schools. The local authority is the decision maker for applications from independent schools wanting to open new maintained schools to replace existing independent schools. The Department for Education (DfE) publishes guidance in relation to a range of school organisation issues, including where independent schools want to move into the maintained sector. A local authority must have regard to this guidance.
- 1.3 The guidance sets out a number of requirements for local authorities to consider in reaching a decision on proposals to open a new maintained school to replace an independent school. In particular the local authority must ensure that the decision to proceed with such a proposal is clearly based on value for money and that the school is able to meet the high standards expected of state-funded educational provision. The guidance lists a number of specific expectations:
 - That there is genuine demand /need for this type of school place in the local community
 - That the current and projected financial health of the proposer is strong
 - That the proposal represents long term value for money for the taxpayer
 - That the school will be able to deliver the whole of the national curriculum to the expected high standard
 - That all aspects of due diligence have been considered and undertaken; and

- That the school building is appropriate for the delivery of a high standard of education and in good condition throughout, or can easily be improved to meet such standards.

- 1.4 Appendix A sets out a proposed local framework, providing guidance for each of these expectations and the supporting evidence required by the council in considering each application. The framework is intended both to assist the council in reaching a decision but also to assist independent schools as they prepare their applications. Each application would be considered on its merits.
- 1.5 The framework has been developed in consultation with Barnet headteacher representatives from Barnet's Schools Forum. The view of the Schools Forum has also been sought as in some circumstances, there are potential financial implications for all Barnet schools when an independent school moves into the maintained sector.
- 1.6 The revenue cost of a new school moving to the maintained sector falls to the Dedicated Schools Grant (DSG). Although the Education Funding Agency (EFA) has indicated that on transfer, the revenue costs of the existing independent school is likely to be funded by the EFA through an increase in the DSG at the normal average per pupil rate, Barnet's funding formula pays a higher than average rate to secondary schools. Therefore each new maintained secondary school place is a 'cost' to the DSG (and therefore all Barnet schools) and the Schools Forum was keen therefore that any new secondary school could demonstrate that they were contributing to meeting the basic need for more school places. The Schools Forum was also keen for the council to pace the number of schools entering the maintained sector in any one year in order to keep any financial burden on the DSG manageable.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The proposed framework is intended to assist the council in its decision making and to assist prospective applicants by clearly setting out the council's expectations.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The alternative option of not developing a framework would make it more difficult for the council in reaching a decision and proposers would be less clear of the expectations of the council, as the decision maker.

4. POST DECISION IMPLEMENTATION

- 4.1 Once agreed, the framework would be used to support applicants to prepare the required information to enable the council to make a decision on each individual application.

5. IMPLICATIONS OF DECISION

5.1 **Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

- 5.1.1 On proposing to open a new maintained school to replace an existing independent school, the new school would become funded through the council's allocation of the Dedicated Schools Grant. The school's revenue funding would be decided in accordance with Barnet's school funding formula.
- 5.1.2 For the first year of entry into the maintained sector, the Education Funding Agency has indicated that Barnet's Dedicated Schools Grant would be adjusted to take account of the increased number of pupils in Barnet schools. However, to maximise the success of this being agreed, the new maintained school would need to be entered into the council's annual submission for school funding each January – for the funding allocation the following September. The council would need to be sufficiently secure of the schools successful transition into the maintained sector to do this. The framework also confirms that the new maintained school will not be eligible for start-up funding nor dis-economies funding which is available to newly built schools or existing maintained schools opening a new phase. Furthermore, the framework makes clear that the local authority would not normally expect to receive a request for a revenue loan within the first five years of the school moving into the maintained sector.
- 5.1.3 In relation to capital, the framework explains the standard of accommodation required before entry into the maintained sector would be approved and therefore, makes clear that a move to the maintained sector will not secure priority for major capital investment. The replacement school becomes part of the maintained estate and will be eligible for capital funding streams that occur from time to time, such as monies previously available to support the provision of infant free school meals.

5.2 **Legal and Constitutional References**

- 5.2.1 Legislation permits proposals for a new voluntary aided school or, where there is an existing independent school, to replace this with a new foundation (including foundation special) school or voluntary controlled school. These are exceptions to the normal requirement for new state maintained schools to be academies. Under section 11 of the Education and Inspections Act 2006, any person may propose to establish a new maintained school falling within the exceptions covered in that section. Proposals must be submitted to the local authority and the local authority will decide whether to accept the proposals or not. When making a decision, the local authority must take account of the Department for Education's statutory guidance on establishing a new maintained school.

5.3 Risk Management

5.3.1 There is a risk to the reputation of the council if independent schools become maintained and do not provide a good standard of education, do not have good governance or are not financially robust. The requirements within the framework ensure these factors are fully explored.

5.3.2 There is a financial risk to the council if schools are not in adequate premises. Each year, the council receives a limited pot of monies in relation to the condition of school premises and also administers an allocation on behalf of Local Controlled Voluntary Aided schools. Should an existing independent school in poor premises become maintained, this could present a burden on these funding streams.

5.4 Equalities and Diversity

5.4.1 The 2010 Equality Act outlines the provisions of the Public Sector Equalities Duty which requires Public Bodies **to have due regard** to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
- advance equality of opportunity between people from different groups
- foster good relations between people from different groups

5.4.2 The broad purpose of this duty is to integrate considerations of equality into day to day business and to keep them under review in decision making, the design of policies and the delivery of services.

5.4.3 Maintained schools are public bodies and must comply with the public sector equality duty and set and publish equality objectives.

5.4.4 A school must demonstrate that it is compliant with the duties of schools as identified in the Equalities Act and that the school positively promotes equality of opportunity for all pupils (e.g. irrespective of gender, race, disability, sexuality).

The main duties under the Equalities Act are:

A school must not:

- discriminate against a pupil or prospective pupil because of their disability, race, sex, gender reassignment, religion or belief, or sexual orientation;
- harass or victimise a pupil or prospective pupil.

A school must not discriminate against a person in relation to the following activities:

- admission to the school;
- the provision of education to pupils;

- access to any benefit, facility or service;
- exclusion from school;

by subjecting a pupil to any other detriment.

5.4.5 Maintained schools are public bodies and must comply with the public sector equality duty and set and publish equality objectives. A new maintained school replacing an independent school should demonstrate its ability to deliver the national curriculum and to meet the diverse needs of pupils, including pupils with special educational needs. Maintained schools have obligations under section 78 of the Education Act (2002) which requires schools, as part of a broad and balanced curriculum to promote the spiritual, moral, cultural, mental and physical development of pupils at the school and of society.

5.5 Consultation and Engagement

5.5.1 The framework has been developed in consultation with Barnet's Schools Forum. The Schools Forum endorsed the proposed framework at its meeting on the 6th February 2015 and account has been taken of feedback from headteacher representatives, in particular in relation to schools robustly demonstrating that they meet the needs of Barnet children and that the quality of the education offer reflects the current high quality education offer in Barnet.

6 BACKGROUND PAPERS

Department for Education; School Organisation Maintained Schools, Annex B: Guidance for decision makers

<https://www.gov.uk/government/publications/school-organisation-maintained-schools>