

Divisions Affected – Chalgrove & Watlington

DEPUTY LEADER OF THE COUNCIL (INC CHILDREN, EDUCATION & YOUNG PEOPLE'S SERVICES)

19 JULY 2022

AGE RANGE EXTENSION OF NETTLEBED COMMUNITY PRIMARY SCHOOL

Report by Corporate Director for Children's Services

RECOMMENDATION

1. **The Cabinet Member is RECOMMENDED to** approve the age range extension of Nettlebed Community Primary School down from 4-11 to 3-11 from 1 September 2022.

Executive Summary

2. Nettlebed School's Governing Body was approached by the Chair of Happy Days Pre-school with a request that they take over management of that provision, which currently operates from the school. This would be achieved by closure of the pre-school and formal age range extension of the school.
3. Age range changes for community schools require a statutory consultation and decision-making process. The decision must be made in accordance with the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 and decision makers must have regard to the statutory guidance, "Making significant changes ('prescribed alterations') to maintained schools", October 2018 ("the Guidance"). The Regulations require that the LA should decide a proposal within two months of the end of the Representation period, otherwise it will fall to the Schools Adjudicator.
4. A statutory notice (Annex 1) and Statutory Proposal (Annex 2) have been published, and the required representation period ended on 17 June 2022; a decision is therefore required by 17 August 2022, if it is not to fall to the Schools Adjudicator.
5. 3 responses were received, all of which supported the proposed age range extension.

Introduction

6. This report follows the publication of a Statutory Proposal/Notice (Stage 1) and a Representation (Stage 2 formal consultation) period relating to the county council's 'prescribed alteration' proposal to expand the age range of Nettlebed Community Primary School. The proposal is made with the support of the school's leadership team and Governing Body. The Cabinet Member is now required to decide on the proposal in accordance with the statutory prescribed alteration procedures.
7. Further details of the proposal are provided in the Statutory Proposal, Annex 2.

Background

8. Happy Days Pre-school is a committee-run voluntary setting operating within Nettlebed School. The setting received an 'Inadequate' Ofsted judgement in October 2021 with concerns relating to leadership and management. The county council early years advisory and 'settings of concern' teams subsequently provided intensive support and advice to the setting to address these issues. A reinspection by Ofsted in March 2022 resulted in an overall judgement of Good.
9. The review following October's Ofsted report publication included discussions regarding governance and leadership. Committee membership is voluntary and there is a frequent turnover, as many are parents participating for the short period when they have children of pre-school age. The committee carries a high level of responsibility for elements including employment of staff, safeguarding and finances. It has become increasingly difficult to attract, train and retain committee members and this may have contributed to the quality issues.
10. The proposal now agreed by the school's Governing Body and the pre-school Committee is for the school to take over management of the provision. Pre-school members voted on 31 March 2022 for closure of the charity, to take effect at the end of the Summer term 2022. Nettlebed School will recruit a qualified teacher to lead the new nursery provision; and existing pre-school staff will transfer to the school's employment. Nettlebed School was rated 'Good' by Ofsted in October 2019 and the Council's early years advisory service has confidence that the leadership of the school Headteacher and Governing body will assure the continued quality of the nursery provision.
11. Happy Days Pre-school currently offers places for funded 2-year-olds. Eligibility is low in this area and for Spring term 2022 only 3 places were funded. The school Governing Body has decided not to include 2 year olds as formal part of the school age range. The additional statutory staffing ratios (1:4 vs 1:13 for 3-year-olds) makes this commitment financially unviable if multiples of 4 places are not regularly filled. The school will honour any existing places at the time of merger and may consider offering funded 2's provision at a

future date using their Governors' community powers under Section 27 of the Education Act 2002.

Corporate Policies and Priorities

12. The proposed school nursery provision supports the Oxfordshire Strategic Plan 2022-2025 by providing opportunities for children to reach their full potential through consolidating early education and childcare places in a school which is rated by Ofsted as Good. Retaining early years provision in Nettlebed will also prevent additional car journeys for local families, where active travel (walking, cycling and public transport) may be difficult due to rurality and the distances involved.
13. The retention of early education provision on the school site with strong school governance will also support the 4 priorities of Oxfordshire's School Readiness strategy.
 - **Strong home learning experiences** to support children's learning and development
 - **Early Engagement.** Nursery staff can identify and support children with additional vulnerabilities early on and ensure that any additional SEND funding or Early Years Pupil funding is spent effectively.
 - **High Quality provision** – The school hopes to employ a qualified Nursery Teacher who will work in partnership with the Reception teacher to provide high quality provision across the Early Years at Nettlebed Community school
 - **Information sharing and high-quality transitions** – the lowering of the school age range will support smooth transitions for both the children and their families as they move through the school
14. The proposal supports the Oxfordshire Pupil Place Plan and Childcare Market Assessment by retaining a supply of early education and childcare places where there would otherwise be a shortfall in meeting local needs.

Financial Implications

15. There is no capital funding relating to this proposal. A dedicated space within the school for early years provision meets the requirements of the Statutory Framework for the Early Years Foundation Stage (Department for Education, published March 2021).
16. The school will set up a Trust to receive the assets of Happy Days Pre-school and ensure that the transfer meets Charity Commission requirements. A sum in excess of £40,000 is expected. The funds must be used to support childcare and early years provision and will help to support the viability of the provision going forward.
17. The school will receive revenue place funding through the Council's Early Years Funding Formula. Financial modelling suggests that the nursery provision is

viable. There may be a small deficit due to low numbers but there is sufficient funding in reserves to cover the shortfall until numbers increase. The school will offer some fee paid childcare and this will help to support viability.

Comments checked by:

Sarah Fogden, Finance Business Partner
sarah.fogden@oxfordshire.gov.uk

Legal Implications

18. Section 6 of the Childcare Act 2006 places a duty on English local authorities to secure sufficient childcare for working parents and Section 7 (as substituted by section 1 of the Education Act 2011), places a duty on English local authorities to secure early years provision free of charge.
19. The Childcare Act 2016 Section 1, places a duty on the Secretary of State to secure the equivalent of 30 hours of free childcare over 38 weeks of the year for qualifying children. Section 2, allows the Secretary of State to discharge their duty under section 1 of the Act by placing a duty on English local authorities to secure free childcare for qualifying children. This duty is set out at regulation 33 of the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016.
20. Extension of age range for community schools is covered by The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 ('the Prescribed Alterations Regulations').
21. The age range extension of a maintained school is subject to the "Guidance", as set out in "Making Significant Changes ('Prescribed Alterations') to maintained schools" published October 2018. This Guidance is for proposers and decision-makers. The Guidance states that the statutory proposal must contain sufficient information for interested parties to decide on whether to support or challenge the proposed change. The proposal should be accessible to all interested parties and should therefore use 'plain English'. The full proposal must be published on a website (e.g. the school or LA's website) along with a statement setting out:
 - how copies of the proposal may be obtained;
 - that anybody can object to, or comment on, the proposal;
 - the date that the representation period ends;
 - and the address to which objections or comments should be submitted.
22. A brief notice (including details on how the full proposal can be accessed e.g. the website address) must be published in a local newspaper. Within one week of the date of publication on the website, the proposer must send a copy of the proposal and the information set out in the paragraph above to the governing body and any other body or person that the proposer thinks are appropriate.

23. Erring on caution the proposal should also if practicable be presented in language that is understood by different individuals whose first language may not be English or for those with visual or hearing impairments. If this is not possible then access should be given to advisors who can explain the information to those individuals.
24. The representation period must last for four weeks from the date of the publication. During this period, any person or organisation can submit comments on the proposal to the LA to be considered by the decision-maker. It is also good practice for representations to be forwarded to the proposer to ensure that they are aware of local opinion.
25. The county council confirms that it has adhered to the above Guidance.
26. The Equality Act 2010 confers an overarching duty on public bodies not to discriminate against individuals with protected characteristics. A change in procedure and policies such as the one which is being proposed is susceptible to challenges under this legislation and therefore it is necessary for the local authority and its partner agencies to ensure that they have carried out the necessary Equality Impact Assessment giving consideration to all relevant factors in reaching its decision about the proposed policy change.
27. Legitimate expectation - a change in policy or introducing a new policy could give rise to a legitimate expectation. The wording of the policies and procedures should be carefully prepared and whilst it should be clear and unequivocal such wording needs to be honourable so that the local authority and its partner agencies deliver what the policy and procedures contain otherwise this would give rise to a legal challenge for breach of a legitimate expectation.
28. Fettering of discretion and exercise of power is another factor which should be taken into consideration in conjunction with the relevant and relatable legislation/s to the issues involved in the policy and procedural changes. Where a duty is conferred on the public bodies by any relevant legislation the policy and procedure should endorse that and be written, followed and delivered in the spirit of that. The policy cannot depart from the statutory provision which governs any specific rule. Where a duty is not expressly stated in legislation the policy and procedure should be applied under the doctrines of natural justice ensuring that it is fair, reasonable, proportionate and rational.

Comments checked by:

Sukdave Ghuman, Head of Legal Services
sukdave.ghuman@oxfordshire.gov.uk

Staff Implications

29. The staffing implications of this proposal relate to the need to assimilate the existing pre-school staff onto the payroll as required in line with the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). In addition, the EYFS requires that nursery provision run a maintained community primary school must be led by a qualified teacher, which will require a recruitment process. The school has received professional support from Hants regarding the TUPE process and has taken account of additional staffing costs in their financial analysis.

Equality & Inclusion Implications

30. Research (e.g. the EPPSE project 2015) demonstrates that high quality early years education matters for **all** children, especially those who are in danger of falling behind the majority...It can help children overcome disadvantage...It can reduce the incidence of special educational needs.' (Working with the revised EYFS: Julian Grenier 2000.) Furthermore, evidence shows that these positive effects last all the way through children's primary and secondary schooling and improve future life chances.
31. Access to high quality local provision increases take up of the universal free early years entitlement. The school will also offer the extended (30 hour) childcare entitlement for working families, which supports access to employment.

Sustainability Implications

32. Extension of the school age range would retain childcare provision in the village. If insufficient childcare places are available in the local area, there would be a greater climate impact resulting from the increased need for families to use motor vehicles to access alternative provision.

Consultations

33. Although there is no longer a statutory 'pre-publication' consultation period for prescribed alteration changes, there is a strong expectation that schools and local authorities will consult interested parties in developing their proposal prior to publication, to take into account all relevant considerations. In accordance with this expectation, Nettlebed Primary School ran an initial public consultation between 5 April and 10 May 2022. This initial consultation received 17 responses (plus 8 'likes' on social media). Of the responses, 16 supported the proposal and the remaining respondent did not express a view but asked for extra information. Additional comments from respondents were:
- whether opening hours would change (2 enquiries)
 - whether charges for additional hours would increase (2 enquiries)
 - sadness at the loss of provision for 2 year olds (2 – but supported the proposal overall)

34. The statutory process for making significant changes to schools requires a four-week representation period following the publication of a public notice. The statutory notice (Annex 1) was published in the Oxford Mail on 20 May 2022 and was also posted on the county council website. The Representation period ran until 17 June 2022. The statutory notice was accompanied by a Full Proposal document (Annex 2), which was available to read online at the Oxfordshire County Council public website, or by request.
35. 3 responses were received during the statutory Representation period, all in support of the proposal.

KEVIN GORDON
Corporate Director for Children's services

Annex 1: Statutory Notice

Annex 2: Statutory Proposal

Background papers: Nil

Contact Officer: Janine Foulkes-Williams, Senior Officer (Early Years Organisation)
07733 001503
janine.foulkes-williams@oxfordshire.gov.uk

June 2022



PUBLIC NOTICE

Proposed Change of Age Range at Nettlebed Primary School

Notice is given in accordance with [The School Organisation \(Prescribed Alterations to Maintained Schools\) \(England\) Regulations 2013](#) that Oxfordshire County Council intends to make a prescribed alteration to Nettlebed Primary School, High Street, Nettlebed, Henley-on-Thames RG9 5DA, effective from 01 September 2022.

The Local Authority, working with the Governing Body of the school, is proposing to alter Nettlebed Primary School's age range from 4-11 to 3-11. This change will enable the school to offer early years and childcare provision.

This Notice is an extract from the full proposal, which can be viewed under the Current Consultations listings on the Oxfordshire County Council public website at <https://letstalk.oxfordshire.gov.uk/>. Copies can also be requested by contacting:

Oxfordshire County Council, Access to Learning

Tel: 07733 001503 or Email: school.planning@oxfordshire.gov.uk

Within four weeks from the date of publication of this Notice, any person may object to or make comments on the proposal by sending them to the Local Authority using the online feedback form located on the Oxfordshire County Council website as detailed above, or by email or post to the above addresses.

Signed: Kevin Gordon, Director of Children's Services

Publication Date: 20 May 2022



FULL STATUTORY PROPOSAL

The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013

Extension of age range from 4-11 to 3-11 at Nettlebed Community Primary School

1. School and LA details

School: Nettlebed Community Primary School

Address: High Street, Nettlebed, Henley-on-Thames RG9 5DA

Local Authority: Oxfordshire County Council

2. Description of alteration

Notice is given in accordance with [The School Organisation \(Prescribed Alterations to Maintained Schools\) \(England\) Regulations 2013](#) that Oxfordshire County Council intends to make a prescribed alteration to Nettlebed Primary School, High Street, Nettlebed, Henley-on-Thames RG9 5DA from 01 September 2022.

Oxfordshire County Council, working with the Governing Body of the school, is proposing to alter Nettlebed Primary School's age range from 4-11 to 3-11 and create a nursery class. This change will enable the school to continue to offer early years and childcare provision following the intended closure of Happy Days Pre-school which currently operates within the school.

This proposal would effectively transfer existing staff and assets to the primary school and enable them to continue to offer early year provision which would otherwise be lost to the village.

3. Evidence of demand

Under Sections 6 and 7 of the Childcare Act 2006, Oxfordshire County Council has a statutory duty to ensure that there is sufficient childcare available to enable families –

- a) to access the funded entitlements for their child
- b) to take up, or remain in work, or
- c) to undertake education or training which could reasonably lead to work

Sufficiency of provision is reviewed annually at the end of the summer term, based on take up and place availability data from the full academic year.

The latest data (Summer 2021) for the Watlington and Nettlebed Medium Super Output Area (MSOA) indicates that there were 4 children eligible for a funded 2-year-old place, and 92 eligible 3-year-old children. The basic entitlement is for 15 hours a week but a proportion of 3-year-olds in working families will also be entitled to an additional 15 hours.

The overall demand for places is measured in 15 hour a week places with one place being one part-time-equivalent (p.t.e). The table below shows the sufficiency of early years funded places for the local area both with and without Happy Days Pre-school.

Sufficiency Watlington & Nettlebed MSOA (Summer 2021)

	2 Year Olds (in p.t.e.)			3 Year Olds (in p.t.e.)		
	Demand	Places	Deficit	Demand	Places	Deficit
with Happy Days	4	4	0	136	128	8
without Happy Days	4	3	1	136	106	30

The adjoining Oxfordshire MSOAs do not have sufficient spare capacity to provide the lost places when Happy Days close and if Nettlebed school does not open a nursery. The closest setting is Highmoor Nursery School, 1.5 miles away and places are fully allocated until September 2023. The next provision is nearly 3 miles away. The loss of local provision would disproportionately affect less advantaged families who may find it more difficult to travel further afield to other childcare providers.

4. Objectives

The proposed nursery class would:

- Ensure the county council meets its statutory duty to secure sufficient early years places
- Be supportive of high educational standards and parental choice. Nettlebed Primary School is rated Good by Ofsted (last inspected 2019) and the continuity of provision from 3-11 will help children get the best start to their learning journey
- Maintain early years provision locally for families in a rural area with limited public transport options to access other provision.
- Prevent unnecessary increases in travel time and costs for families in the area.

5. The effect on other schools, academies and childcare institutions within the area

The proposal is not expected to affect other providers within the area as it will replace existing provision without expansion. Patterns of access are therefore expected to remain similar to now, where most local families choose early years provision on the school site. A small number access provision further afield likely because of factors such as religious ethos, the need for a longer childcare day or convenience due to proximity to workplace.

6. Project costs and funding

There are no capital costs for implementing the proposal. The school will reclaim and use the area currently leased to Happy Days Pre-School and this fully meets the requirements of the Statutory Framework for the Early Years Foundation Stage (September 2021).

The school will access place funding for their nursery children through the early years funding team at a set hourly rate which applies to all schools and settings. A business case and projected budget has been discussed and reviewed with the Council's schools finance accountant.

The school is setting up a Trust and the intention is that subject to final confirmation from the Charity Commission, Happy Days Pre-School will transfer all assets to the Trust at the time of their closure. This will help to support the viability of the early years provision and ensure that it doesn't negatively impact the wider school budget while still delivering a high quality offer to children and families.

7. Implementation and any proposed stages for implementation

The school is investigating the process for Transfer and Undertaking (Protection of Employment) legislation with specialist support from the Council's Human Resources team. Following approval, the staff would transfer to become school employees. The school is also seeking to appoint a qualified teacher to run the nursery. It is expected that this will be in place for a start in September 2022 so that there is no break in provision.

Children currently attending Happy Days Pre-school will be transferred onto the school nursery roll on 1 September 2022. The school will honour any existing patterns of attendance, but all new place offers will be in line with the Oxfordshire County Council Nursery Class Admissions Policy.

8. Objections and comments

Comments or objections must be received by the local authority by **17 June 2022**.

Respond by:

- using the online questionnaire at letstalk.oxfordshire.gov.uk/nettlebed-community-primary-school-extension-of-age-range
- emailing school.planning@oxfordshire.gov.uk (please quote 'Nettlebed nursery class' in the subject line)

9. Decision-making

The decision-maker for this proposed extension is Oxfordshire County Council. The decision will be made by the Cabinet Member responsible for Education at a meeting which is open to the public and publicised on the county council's website. The decision

must be made within a period of two months of the end of this representation period and is currently expected on 19 July 2022.