

**Open Report on behalf of Heather Sandy,
Interim Director of Education**

Report to:	Councillor Mrs P A Bradwell OBE, Executive Councillor for Adult Care, Health and Children's Services
Date:	21 June 2019
Subject:	Proposal to change the age range at Market Deeping Community Primary School from 3 to 11 to 4 to 11 (Final Decision)
Decision Reference:	I017849
Key decision?	Yes

Summary:

Lincolnshire County Council has a statutory duty to maintain both a sufficient number of early years places in Lincolnshire and also sufficient school places to accommodate all pupils of statutory school age who live in Lincolnshire.

The proposal under consideration is to permanently change the age range at Market Deeping Community Primary School from 3 to 11 to 4 to 11.

The Local Authority is co-ordinating the process following statutory guidelines published in the Department for Education (DfE) guide "Making 'prescribed alterations' to maintained schools. Statutory guidance for proposers and decision-makers" (October 2018) in accordance with the terms of the Education and Inspections Act 2006, as updated by the Education Act 2011.

On 23 January 2019 a four week period of consultation commenced which closed on 20 February 2019 and is further referred to later in this report in the Consultation section. A summary of written responses received is also attached in Appendix A.

Following the consultation period the decision was taken on 11 March 2019 to publish a Statutory Notice on 29 March 2019. This initiated a four week Representation Period up to 26 April 2019 when further written objections and comments may be submitted. The process is now entering the final stage when the Local Authority, as decision maker, must take the final decision regarding the proposal within 2 months from the end of the Representation Period (by 26 June 2019).

This report seeks to advise the Executive Councillor on making the final decision regarding the proposed age range change of Market Deeping Community Primary School.

Recommendation(s):

That the Executive Councillor approves the permanent change in age range at Market Deeping Community Primary from 3 to 11 to 4 to 11 with effect from September 2019.

Alternatives Considered:

1. Alternatives Considered:

The Council retains the school as it is at present with an age range of 3 to 11.

The above alternative would have the following disadvantages:

There would be an over-sufficiency of pre-school provision for 3 year olds in this area of Market Deeping if the age range is not changed and there could be a negative impact on the school in terms of early years provision being financially and educationally sustainable as there is too much provision with insufficient pupils to fill the places.

Reasons for Recommendation:

Madcaps are the current third party early years provider co-located with the school and providing the pre-school places. They have a current Ofsted judgement of 'Good' and the local authority has no concerns regarding the quality being delivered at this provision.

There are currently 27 places being claimed for Early Years children attending Madcaps and this includes 2 year old funded children. This is deemed to be meeting the sufficiency need within the community.

It is advised that Madcaps continue to provide the required pre-school places for the local community. There is no requirement to also have 3 year old provision on roll at Market Deeping Community Primary School as this would result in an over-sufficiency of provision of pre-school places from the same site and have a potential negative impact on the business model of both the school and Madcaps.

1. Background

In September 2018 the Published Admission Number (PAN) of the school was increased from 30 to 45 with the capacity for 4 to 11 year olds increased from 210 to 315. As a result of those expansion plans the pre-school part of the school was temporarily closed in September 2017, with displaced pre-school places being provided by Madcaps; a third party provider on site. Therefore no nursery provision was lost. The number of places offered was actually increased with enhanced provision. Temporary age range changes are allowed for up to a maximum of two

years before a decision needs to be taken regarding making the arrangements permanent or reverting back to providing pre-school places.

The temporary closure of the school's nursery provision has allowed the classroom space to be used for 4-11 year olds whilst building work has taken place. This arrangement has been successful and is proposed to be made permanent with Madcaps continuing to provide the required pre-school places for the local community. There would therefore be no requirement to also have 3 year old provision on roll at Market Deeping Community Primary School as this would result in an unsustainable over-provision of pre-school places from the same site.

It is the Local Authority's statutory duty to maintain both a sufficient number of early years places in Lincolnshire and also sufficient school places to accommodate all pupils of statutory school age in Lincolnshire. The Local Authority works with the maintained sector and also private, voluntary and independent (PVI) providers to ensure sufficient early years places. There would be an over-sufficiency of pre-school provision for 3 year olds in this area of Market Deeping if the age range is not changed. There are currently no 3 year olds on roll at the school.

The school and the Local Authority believe that the provision of Local Authority maintained nursery places are no longer necessary at Market Deeping Community Primary School. There will continue to be sufficient early years places in the area to ensure adequate provision and choice for parents in Market Deeping. Following statutory consultation, if the proposal is approved, the age range will be amended with effect from 1 September 2019.

Reaching the decision – Preliminary Considerations

The requirements for decision making relating to school organisation in Local Authority Maintained schools are set out in the guide "Making 'prescribed alterations' to maintained schools. Statutory guidance for proposers and decision-makers" (October 2018) published by the DfE.

The DfE does not prescribe the exact process which a decision maker should follow but the decision maker must have regard to this guidance. The decision maker should consider the views of those affected by the proposal and should not simply take account of the numbers of people expressing a view but give greatest weight to those stakeholders most likely to be affected and especially the parents of children at the school concerned.

Factors to be considered by Decision Makers

The Consultation and Representation Period

The Executive Councillor must be satisfied that the appropriate consultation and representation periods have been carried out and that all of the responses received have been given due consideration.

Although there is no longer a prescribed consultation period prior to the publication of the Statutory Notice and Complete Proposal the DfE's guidance states "*a strong expectation on schools and local authorities to consult interested parties in developing their proposal prior to publication*". The Local Authority conducted a four week period of pre-consultation to fulfil this expectation and also to operate a fair and open process and ensure all views were considered. A Statutory Notice (Appendix B) and Complete Proposal (Appendix C), initiating a four week Representation Period, were published in accordance with current statutory requirements.

Responses submitted during both the Consultation and Representation Period have been made available to the Executive Councillor for consideration when taking the final decision and further details of these responses are provided in section 5 of this report (**Consultation**).

Education standards and diversity of provision

The Executive Councillor should consider the quality and diversity of schools in the area and be satisfied that the proposal will meet the aspirations of parents, contribute to raising local standards of provision and lead to a closing of attainment gaps. The Government's aim is to create a more diverse school system offering excellence and choice so that every child receives an excellent education whatever their background and wherever they live.

The Local Authority believes that this proposal provides the best option to maintain and improve standards of attainment with an enhanced quality of education for current and future children in the area whilst maintaining diversity.

Demand

Madcaps are able to provide sufficient early years places. Therefore it would be excessive to also have 3 year old provision on roll at Market Deeping Community Primary School as this would result in an over-sufficiency of provision of pre-school places from the same site.

Proposed admission arrangements

Before approving the proposals the Local Authority must ensure that the admission arrangements of the school are compliant with the School Admissions Code. As the pre-school part of the school has been closed since September 2017 admission arrangements are already in place and no changes will be required.

National Curriculum

All maintained schools must follow the National Curriculum unless they have secured an exemption. Market Deeping Community Primary School currently follows the National Curriculum and will continue to do so if the proposed age range change is approved.

Equal Opportunity

The Local Authority must have 'due regard' to the need to eliminate discrimination, advance equality of opportunity and foster good relations and should consider whether there are any sex, race or disability discrimination issues that arise out of the proposed expansion. There should be a commitment to provide access to a range of opportunities which reflect the ethnic and cultural mix of the area while ensuring that such opportunities are open to all.

The Local Authority will continue to be committed to provide access to a range of opportunities which reflect the ethnic and cultural mix of the area while ensuring that such opportunities are open to all.

Community cohesion

The impact on the community must be considered and schools have a key part to play in providing opportunities for young people from different backgrounds to learn from and respect each other and gain an understanding of other cultures, faiths and communities. The decision-maker must take account of the community served by the school and the views of different sections of the community.

Travel and accessibility

The Executive Councillor should be satisfied that accessibility planning has been properly taken into account and that proposed changes do not adversely impact on disadvantaged groups. Proposals should not unreasonably extend journey times or increase transport costs or result in too many children being prevented from travelling sustainably due to unsuitable walking or cycling routes. The proposal should be considered on the basis of how it will support and contribute to the Council's duty to promote the use of sustainable travel and transport to school.

As the pre-school provision is still being provided in the locality there are no transport issues to consider. The sufficiency needs are still met from the same site through Madcaps and places remain accessible to all.

The County Council does not provide home-to-school transport for pre-school pupils and has no legal obligation to do so.

Capital

The Executive Councillor should be satisfied that any land, premises or capital required to implement the proposals will be available and that all relevant parties have given their agreement. A proposal cannot be approved conditionally upon funding being made available. No additional land, premises or capital are required in the implementation of this proposal.

School premises and playing fields

All schools are required to provide suitable outdoor space to both enable physical education for pupils in accordance with the curriculum and also for pupils to play outside safely. DfE guidelines suggest areas for pitches and games courts but these are non-statutory.

This proposal will have no bearing on the amount of space available.

Special Educational Needs (SEN) Provision and SEN Improvement Test

If the proposal is approved there is likely to be no impact with regard to SEN provision. The Local Authority will continue to ensure suitable provision for all children with special educational needs and consideration of their needs will take place with physical access being assured should a need be presented. As it does now, the Local Authority will continue to look to make improvements in the standard, quality and/or range of the education provision for children with SEN and so meet the Special Educational Needs Test.

2. Legal Issues:

Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- * Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- * Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- * Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- * Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
- * Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
- * Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding

Compliance with the duties in section 149 may involve treating some persons more favourably than others

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process.

An Equality Impact Assessment has been carried out and is available on request. As no provision is being lost and the pre-school provision will continue to be provided by Madcaps on the site of Market Deeping Community Primary there are no positive or negative impacts reported.

Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision.

n/a

Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

n/a

3. Conclusion

The final decision is required from the Executive Councillor to determine whether to approve the proposal to permanently change the age range at Market Deeping Community Primary School as detailed in this report. The factors to consider in making this decision are within this report and all valid written responses received during consultation and the Representation Period (see section **6 Consultation**) must be considered.

The Local Authority believes this proposal to be in the best interests of local children and local parents as well as educational provision in the area and it supports the council's aim of ensuring that as many children as possible can reach their full potential. It also enables the Local Authority to fulfil its statutory duty of ensuring that there are sufficient places to accommodate all pupils of statutory school age in Lincolnshire.

It is recommended that the proposal is implemented to ensure the best educational opportunities for the children of Market Deeping and the wider area. The advantages of implementing this proposal are detailed earlier in this report in the "**Reasons for Recommendations**" section.

4. Legal Comments:

The Council is the decision-maker for school alteration proposals of this type under the School Organisation (Prescribed alterations to maintained schools) Statutory guidance for proposers and decision-makers (October 2018). The decision-maker may reject the proposal, approve the proposal without modification or approve the proposal with such modifications as the Council considers desirable but only after consultation on those modifications with the governing body.

The Council as decision-maker may make the approval of the proposal conditional but only on specified matters contained in the Regulations.

The proposal is consistent with the Policy Framework and within the remit of the Executive Councillor.

5. Resource Comments:

There are no significant or immediate financial implications arising from the recommendation in this report to change the age range at Market Deeping Community Primary School with effect from 1 September 2019.

In September 2018 the schools PAN had increased from 30 to 45 with the capacity for 4 to 11 year olds increasing from 210 to 315 over time to meet the local authority's statutory duty to provide sufficient school-age places. This pupil growth funding will have offset any school funding reductions from its nursery provision and a larger school will have greater opportunities for achieving more economies of scale and efficiencies.

6. Consultation

In order for the school to change its age range the Local Authority must follow the necessary statutory processes in accordance with the Education and Inspections Act 2006, the Education Act 2011 and the guidance "Making 'prescribed alterations' to maintained schools. Statutory guidance for proposers and decision-makers" (October 2018) issued by the DfE.

Under these guidelines the Local Authority must ensure that sufficient time and information are provided for people to understand, form a view on the proposal and make a response. Under the DfE guidelines which came into effect in October 2018 there is no longer a prescribed consultation period for significant changes to schools (including physical expansions). However there is a "*strong expectation on schools and local authorities to consult interested parties in developing their proposal prior to publication*". To comply with this the Local Authority has conducted a four week period of pre-consultation. Any documentation issued must set out the problem that is being addressed and invite comment on one or more solutions. The Local Authority must explain the decision making process and take all reasonable steps to draw the proposal to the attention of all those who might be interested and take into account their views.

The Education and Inspections Act 2006 specifically includes as interested parties the registered parents of registered pupils at the school and also the appropriate District and Parish Councils for the area. The guidance issued by the DfE in October does not prescribe a definitive list of consultees. The list of interested parties was therefore compiled comprising as wide a range of consultees as practicable to ensure that all interested parties were included and incorporated parents of current pupils, the District Council, as well as individual County, District and Parish Councillors as appropriate. Children at Market Deeping Community Primary School were given the opportunity to discuss the age range change proposal via the school council.

A letter incorporating relevant information and reasons for the proposal was sent out to a wide range of interested parties on 23 January 2019 to commence a four week period of consultation. There was the opportunity to provide a response to the consultation online, by letter, email or by returning a response form by 20 February 2019. A copy of the letter commencing consultation was published on the County Council website at www.lincolnshire.gov.uk/schoolorganisation .

All written responses received during consultation have been made available to the Executive Councillor for consideration and further details are confirmed in this report in Appendix A. To briefly summarise, however, there were 6 valid responses in total with 1 against the proposal, 5 for the proposal and 0 neither for nor against. All comments made will be taken into consideration by the Executive Councillor in the decision making process.

The objection stipulated that the children at Madcaps do not have access to the same range of resources and equipment, that space was limited, and although staff were lovely, it was far from the usual pre-school environment. The Local Authority does not respond to consultees comments direct, however any objections must be considered in making a final decision. The Local Authority considers that Madcaps is one of the best resourced settings in the county with three playrooms and three outdoor spaces. The accommodation and resources are considered to be an improvement to that on offer previously through the school. Madcaps offer all year round provision with extended hours, a service the school were unable to provide due to the restrictions of term times and school hours. In addition to offering pre-school places for children aged 2 to 5, Madcaps also provides before

and after school care for pupils aged 4 to 11. Initially the setting only provided pre-school places for pupils aged 3 to 5, but Local Authority funding to provide additional resources has enabled them to take children from 2 years old.

Following the completion of the consultation period all feedback was considered with a full report (which is referred to in the Background Papers section below and will also be re-considered along with this report) by the Executive Councillor and a decision was taken on 11 March 2019 to proceed to Statutory Notice. A statutory 4 week Representation Period was entered into on 29 March 2019 commencing with the publication of the Statutory Notice (Appendix B) in the local press, on the Lincolnshire County Council's website and at the school gates. The Complete Proposal, available in paper and electronic format (Appendix C) to which the Statutory Notice refers, was sent to interested parties as detailed in the statutory guidance and was also published on the website at www.lincolnshire.gov.uk/schoolorganisation . The Representation Period provided a further opportunity for people and organisations to express their views and ensure that they are taken into account when the final decision is taken. No responses were received during the Representation Period.

Under current legislation the Local Authority is the decision maker for the proposal and is co-ordinating the statutory process before making a final decision in June 2019. The Local Authority, as decision maker, must be able to show that all relevant issues raised are taken into consideration in the decision making process. Points raised can be considered unpersuasive but must not be ignored altogether.

The last stage of the statutory process would be the implementation of the proposal with the permanent change in age range with effect from September 2019.

a) Has Local Member Been Consulted? Yes

b) Has Executive Been Consulted? Yes

c) Scrutiny Comments

On 7 June 2019, the Children and Young People Scrutiny Committee considered this report and supported the recommendation to the Executive Councillor for Adult Care, Health and Children's Services.

The following points were confirmed by the Committee's consideration:

- Links Between School and Third Party Early Years Provider – There were good relationships between the school and Madcaps, the third party provider. As a charity, Madcaps had its own management arrangements, but it worked well with the school's governing body. Both the school and Madcaps were reluctant to create a competitive arrangement, which could lead to age three provision not being sustainable in either case.
- Funding Implications - There were no funding implications arising from the change of age range at the school. It was understood that the funding

position of Madcaps was strong. If there was a failure by Madcaps on the basis of funding, contingency arrangements would be put in place, as they would be in the case of a failure by any other early years provider.

- Requirement for a Decision - A decision was required on the school age range, as a previous decision on the temporary change to the age range at the school could only be effective for a period of two years only and this temporary period was due to expire by September 2019.
- Initial Response to the Plans – There had been a positive response to the plans when they had initially been proposed. This positive view had continued.

d) Have Risks and Impact Analysis been carried out? Yes

e) Risks and Impact Analysis

An Equality Impact Assessment has been completed and in summary the analysis indicates that there will be no significant impact, positive or negative, arising out of the Executive Councillor's decision.

7. Appendices

These are listed below and attached at the back of the report	
Appendix A	Summary of written consultation responses
Appendix B	Statutory Notice
Appendix C	Complete Proposal

8. Background Papers

Document title	Where the document can be viewed
Report on the proposal to change the age range at Market Deeping Community Primary School (decision to go to Statutory Notice)	Lincolnshire County Council Committee Records Reference I017399
The DfE guide "Making 'prescribed alterations' to maintained schools. Statutory guidance for proposers and decision-makers" (October 2018)	Available on request from the School Organisation Planning Team, Children's Services.
Equality Impact Analysis	Available on request from the School Organisation Planning Team, Children's Services.
Individual consultation responses	Individual responses available to be viewed by the decision maker. Content of responses anonymised and summarised to this report in Appendix A.

This report was written by Matthew Clayton, who can be contacted on 01522 555353 or matthew.clayton@lincolnshire.gov.uk .