

Mayor and Cabinet		
Report Title	Review of alternative sites for new school	
Key Decision	Yes	Item No. 4
Ward	Lewisham Central	
Contributors	Executive Directors for Regeneration, Children and Young People, Resources, Director of Property and Programme Management, Head of Planning, Head of Law	
Class	Part 1	Date:8 November 2006

1 Summary

- 1.1 This report describes the further work carried out by officers and advisors, following the decision of the Mayor and Cabinet on September 27th 2006 to look further at the feasibility of an alternative site for the new secondary school. It sets out the risks and the advantages and disadvantages of the options and concludes that the arguments are finely balanced between staying with the existing preferred site (the Ladywell Leisure Centre in 2009) and moving to the Lewisham Bridge site option.

2 Purpose

- 2.1 To advise the Mayor and Cabinet of the further work carried out to evaluate the feasibility of additional sites for the new secondary school and the officer evaluation of the options. The report evaluates the educational, financial and site-related advantages and disadvantages of each of the options.

3 Recommendations

The Mayor is asked to agree:

Either

- 3.1 That the existing preferred site for the new school of the Ladywell Leisure Centre be confirmed,

Or

- 3.2 That Lewisham Bridge Primary School site be agreed as the new proposed location for the new secondary school in the BSF programme and
- 3.2.1 That officers begin the consultation process and, if appropriate, to secure all necessary statutory approvals for the new school and its federative arrangements.
- 3.2.2 That officers seek dispensation from the Secretary of State not to have to proceed with the competition requirements of the Education Act 2005 to allow minimal disruption to the BSF programme

- 3.2.3 That officers consult on the basis of (a) the new school becoming an all-through 3-16 school incorporating 1 form of entry primary provision at Lewisham Bridge Primary School and (b) the new school being incorporated into a new hard federation with Prendergast School, sharing governance and under the executive leadership of the current headteacher of Prendergast School;
- 3.2.4 That officers carry out all necessary work to submit a revised Strategic Business Case to secure PfS approval for a revised delivery programme

4. Background

- 4.1 At its meeting on June 14th 2006, the Council agreed the following resolution.

“This Council does not believe that a convincing case for closing Ladywell Leisure Centre in 2007 has yet been made. The current plans have failed to command public support and the recent local election results reflect that. The Council therefore calls upon the Mayor to appoint independent advisors to investigate more appropriate sites for a new school in the north of the borough, rather than the Ladywell Leisure Centre site. The independent advisors will be commissioned jointly by the Mayor and the Leaders of the largest opposition group, in consultation with councillors of all parties, parents’ representatives and teachers’ unions. Council believes Ladywell Leisure Centre must not close until a new centre in the vicinity is fully operational and all councillors must receive regular reports on all progress made and/or difficulties encountered”.

- 4.2 On July 19th 2006 Mayor and Cabinet agreed that further work be carried out to investigate possible alternative sites for the agreed new 600 place secondary school agreed as part of the BSF programme.
- 4.3 The Executive Director of Regeneration commissioned CBRE, an external firm of consultants to carry out a review of 29 sites, including the currently agreed Ladywell site.
- 4.4 On September 27th 2006 Mayor and Cabinet instructed further work be carried out to evaluate feasibility on the Ladywell site, Lewisham Bridge Primary School and part of the site owned by University College Hospital Lewisham.
- 4.5 The Mayor agreed with officers’ recommendation that no further work be undertaken on four other sites namely, Catford Stadium, the Playtower, Convoys Wharf and Lewisham College.
- 4.6 This report sets out the results of the requested evaluation.

5 Site Evaluation Criteria

- 5.1 In this report it is not proposed to structure the consideration of the sites against weighted criteria, however it is important to set out the seven factors against which each site will be judged. As will be set out in section seven below, there is no risk free option nor a site where timing of delivery can be guaranteed.

Site ownership

- 5.2 Whether any site is in the current ownership of the Council is an influential factor that goes to both the deliverability and affordability of any new school.

Planning consent

- 5.3 Planning approvals are always a significant factor to be considered when weighing up the deliverability of a scheme. The need to secure planning consent, and whether such a consent would constitute a departure from existing allocations or policy, have to be assessed.

Impact on BSF programme

- 5.4 Any change from the agreed OBC approved in March 2006 would be likely to require PfS approval via a revision to the Strategic Business Case. In addition delays in delivering new facilities, new places and affordability risks associated with construction cost inflation could all impact on the programme as a whole.

Early delivery

- 5.5 The need to deliver a new school as early as possible has always been a crucial education criterion given the continued pressure for additional places. Each site needs to be assessed against new delivery timetables.

Financial costs and benefits

- 5.6 The financial implications of any alternative site will include examining whether the Council will have to purchase third party interests and how this could be funded. In addition the potential value of surplus land should a site other than Ladywell be considered.

Consultation and approvals

- 5.7 Any change to the agreed position will require consultation and approval under the current and future regulations. An assessment is made of the likely impact on delivery on any site other than Ladywell in 2009.

Proximity to other schools

- 5.8 Any new school close to an existing school has the potential to jeopardise viability and success.

6 Assessment and evaluation of sites

- 6.1 Appendix 1 sets out a summary of the assessment of the three sites against the above criteria. The following sets out the key arguments for each of the sites.

Lewisham Hospital

- 6.2 Lewisham Hospital was a new site not previously considered, and on early examination appeared to have some advantages. However, even if a funding package could be put together for acquisition in advance of any disposal of Ladywell, there is considerable uncertainty about how the timetable required to deliver vacant possession would be achieved. While clearly the site (taken together with the Council's Registry Office site) is large enough to accommodate the school it is assessed that the site and financial risks (set out in Appendix 1) are very significant. These concerns include resolving car parking, re-siting the Registry office, providing access to the hospital and are estimated to cost

£10.4m. For these reasons it is considered by officers that the site is too risky to warrant further consideration and the work has therefore focused on the other two sites.

Ladywell Leisure Centre

- 6.3 A new school delivered on the site of Ladywell Leisure Centre remains the option with the only chance of delivering new places by September 2009. As Appendix 1 shows, the site is owned by the Council and has a current SOC approval requiring a 2009 opening. It also has all the PFS approvals required under the BSF programme. The key risk to deliverability is gaining the necessary planning consent. The award date of the BSF contract could impact on this as it is anticipated that the successful partner would be responsible for design and gaining the required permission. Opening a new school on the Ladywell site in 2009 remains the most straightforward and affordable option with the greatest chance of early delivery. In educational terms, it not only delivers the required places to a reasonable timescale but also provides reasonable access to families who are currently not receiving one of their six preferences of school. In staff capacity terms, it is also the least risky option. Given the scale of delivery required by the BSF programme over the next 18 months, this option would not need the increased levels of staff input across the Council that other options would require given the complexities of the approvals processes and extensive consultations that would have to be undertaken in relation to any new site or any delay. As with all the options, consultation is still required to secure the proposed new federative arrangements set out in Section 7.
- 6.4 However, a significant factor for some has been the impact of this timetable and site on leisure provision in Lewisham Town Centre. The current timetable requires demolition of the leisure centre in October 2007, with the planned new facility not being available on the Loampit Vale site until 2010. The levels of concern about the loss of leisure provision could create a potential planning risk to the delivery of the new school on the Ladywell site by 2009. Delays to the planning process could be sufficient to delay the opening beyond September 2009 thereby losing one of the advantages of this option.
- 6.5 To retain continuity of leisure provision and site, the school at Ladywell would not be provided until 2012 at the earliest. This would result in a minimum delay of six years before the pupil place shortage could begin to be addressed. This would have serious educational consequences. In addition, a 2012 Ladywell option would have significant financial consequences as the construction inflation costs would not be protected. A delay to the opening date of the new school to 2012 on this site is also likely to trigger the need for the complex approvals processes required by other site options, thereby losing one of the key advantages of the Ladywell site. For these reasons, officers would not recommend a 2012 opening on the Ladywell site.

Lewisham Bridge School site

- 6.6 The site itself has some advantages over both Ladywell and Lewisham Hospital. As with the Ladywell site, it is in the ownership of the Council. However, unlike Ladywell, it is already in educational use and while the intensification of education could constitute a planning risk, this is a planning advantage over Ladywell. The site is, by a small margin, best located in relation to other schools and it has the best accessibility of all the sites.

Site feasibility

- 6.7 Initial feasibility work demonstrates that it is possible to accommodate a new all through school on the existing site of the school without third party acquisitions. It is also considered feasible to decant the primary school on site while construction is underway.
- 6.8 The site of Lewisham Bridge School was considered and rejected in both 2002 and again in 2004. In rejecting the site in 2002, careful consideration was given to the potential impact of a new secondary school on the regeneration prospects for Lewisham Town centre. It was advised that "The situation of a secondary school in the town centre would reduce the value of the element of the Sundermead estate whose sale is a key component of the funding package for the redevelopment of the area. The siting of a secondary school in this location would also have a potentially negative impact on potential investors in the Town Centre redevelopment and would detract from the strategy of attracting high value employment generation and residential land uses in the area."
- 6.9 Further detailed considerations were set out in the 2002 report by the then Executive Director of Regeneration who concluded that potential investors might be deterred by plans for a secondary school as it could depress residential land values. At the time of this advice such a conclusion was reasonable as Lewisham Gateway had not emerged as a viable proposition, much of the new housing now completed in the town centre had not been planned, and as explained above the Sundermead proposals and associated negotiations were at a critical stage.
- 6.10 In 2004 the financial arrangements with Tower Homes, the equity ownership developer on the Sundermead site, were not completed and, at that time, site values could have been effected if a secondary school were located nearby. These arrangements are now concluded and the final stage of the work on Sundermead is now in progress.
- 6.11 Over the last four years much has changed. The Sundermead development is well advanced, the Gateway scheme is now an outline planning application lodged with the Council and a decision expected in the spring of 2007. Discussions are also well advanced with the owners of the Shopping Centre about plans for a significant refurbishment associated with new development. Essentially therefore market confidence in Lewisham is considerably different than was the case in 2002.
- 6.12 As part of the initial CBRE evaluation the consultants were asked to assess the current likely impact on residential values of a new secondary school in the Town Centre. It is their view that given the likely mix of units in the Town Centre there would only be a small impact on residential values. They stress however that comparables are not that easy to find but that on balance they do not assess this as a significant risk to commercial viability. It is also important to stress the alternative view that a successful, popular school can have a beneficial effect on residential values.
- 6.13 It would be impossible to deliver a new school on the site by 2009. If both the statutory approvals and PfS approval to programme change were achieved within the 12-16 month period assessed as necessary, it is officers' judgement that it might be possible to open the school by September 2010. This period assumes a two year build programme that recognises the scale and complexity of the project compared to Ladywell, and the programming and decant challenges inherent in the scheme. It is important to stress however that this programme is heavily dependent on an early start to the approvals process and securing a funding package for the primary element of the school, that is not provided for within the current BSF funding approval.

a 3-16 school

- 6.14 The site, which was favoured on education grounds in 2002, still offers good educational potential, not only in relation to its accessibility but also because of the opportunity to establish an innovative integrated 3-16 school, incorporating the current primary provision at Lewisham Bridge Primary School. An all-through school brings a number of potential benefits, particularly for a small secondary school and in a borough like Lewisham where transition between our primary and secondary schools remains a key challenge. Some benefits include:
- ⇒ avoidance of the 'dip' in achievement in Y7 and a greater understanding by secondary staff of how to build on the children's work from the primary phase;
 - ⇒ a strong community, citizenship and family ethos where older children understand their responsibilities as role models for the younger pupils;
 - ⇒ the ability to introduce more specialist teaching into the primary phase particularly in areas such as languages, music and science;
 - ⇒ the ability for good primary practice to be incorporated higher up the school where appropriate and for those children who need extra support;
 - ⇒ stronger professional development opportunities for staff
 - ⇒ operational efficiencies and benefits through integration;
 - ⇒ opportunities to design a purpose built all-through school building in efficiencies while providing identified bases for different age groups and security for younger children.
- 6.15 There are many examples of successful all-through schools in the independent sector but there are fewer of these kinds of schools within the maintained sector. While there is therefore little formal precedent or evidence of the impact of an all-through structure in the maintained sector, evidence does continue to show that the real success factors in any school relate to its leadership and to the quality of teaching and learning provided. The proposed federative structures set out in Section 7 are designed to secure that success. This proposal represents a good opportunity for Lewisham Bridge School which is currently not achieving the Government's floor targets at the end of Key Stage 2. A rebuild in tailored, modern buildings coupled with the federative arrangements as set out below, would significantly enhance the improvement efforts currently underway at the school.
- 6.16 Notwithstanding the potential benefits outlined, there will be some who do not welcome an all-through school on the Lewisham Bridge site. Some parents who are used to the traditional primary school approach have already indicated their concern that the intimacy of a stand alone primary school may be lost. They have also expressed concern that there may be safety issues in mixing older and younger pupils. If this site is chosen, it will be important, during the consultation period to listen carefully to the views of parents and show how the proposals take account of those concerns. Issues have also been raised by some primary headteachers in the borough who do not wish to see, as they perceive it, secondary provision dominating primary provision.

Reducing the size of the primary provision

- 6.17 Lewisham Bridge Primary School is currently a 2 form entry school with an admissions limit of 60 children each year. If an all-through school were established on the site, the primary children would have right of entry into the secondary part of the school. It is proposed therefore that we should reduce the primary provision to 1 form of entry. This is because the secondary part of the school is itself only 4 forms of entry. One of the key

reasons we are opening the new secondary school is to provide additional places in the borough for those parents who currently do not receive one of their six preferences. If the primary provision stayed at 2 forms of entry and those children all had right of entry into the secondary part of the school, that would only leave 2 forms of entry open to new pupils from elsewhere in the borough. Reducing the provision to 1 form of entry would leave 3 forms open. In addition, there is educational merit in having more new intake at Y7 in order to broaden the experiences of those in the primary part of the school.

- 6.18 Work has taken place to assess how secure we would be in reducing the primary provision in this way at Lewisham Bridge. The school currently does not recruit well to its admissions limit, and over the past six years the school has admitted significantly fewer than 60 pupils to its reception year groups. There is currently projected to be only 39 children in Reception and last year there were only 33 children in Year 6. The average vacancy rate is 20 pupils in each year group.
- 6.19 Analysis of the pattern of home addresses of the 39 reception year children in Lewisham Bridge reveals that 28 children live within approximately 0.5 miles of the school. 11 children will travel considerably further to the school and their home addresses are close to other schools with surplus places. Equally there are schools reasonably close to Lewisham Bridge which also have vacancies which could absorb any reduction in provision on this site.
- 6.20 Whilst, with our current population, officers consider it safe to reduce the numbers in Lewisham Bridge, it is also very important to consider future demand for primary place provision. Projected demand for primary school places in the planning area within which Lewisham Bridge school is situated indicates that there will be a steady rise in demand for places, from 842 in 2008 to 949 in 2016. (Based on 2006 Greater London Authority pupil projections). However, this is still well within the overall existing capacity of 1083 available places in the area.
- 6.21 The impact on pupil numbers of plans for the regeneration of Lewisham town centre over the next decade will need to be kept under close scrutiny as an essential feature of ongoing review of primary school place provision. The number and nature of new residential developments that might house additional numbers of children in the area are subject to early planning and negotiation with developers.
- 6.22 If the primary element of the proposed new all through school is reduced to 1FE, it should be done as soon as possible with the current Lewisham Bridge school in order that the feed through into the secondary part of the school in 2010 is manageable.

Approvals

- 6.23 A key disadvantage and risk of opting for the Lewisham Bridge site is the complex and lengthy process that would have to be undertaken to get to the stage that we are already at with the Ladywell site. The Head of Law sets out the position regarding approvals and consultation below. We are currently under a statutory responsibility to open a new school on Ladywell in 2009. The process of consulting on and then requesting that the SOC revokes this requirement is not straightforward and there is a risk that it will not grant the request. Should a decision be made to locate on this site, new consultation would have to be undertaken, and if appropriate approvals sought under new regulations which could require us to run a 'competition' inviting organisations to bid to run the proposed new school. Current plans are for the school to start its life as a community school and this could require revisiting as part of the competition process. Indications are

that a period of between 12 and 16 months can be expected to be required for this process. The process is complex in itself but is further complicated by the need to consult on the federative arrangements set out at Section 7 below and the need technically to close Lewisham Bridge primary school and then to re-open it in its all-through format. There could be opposition to the proposals as indicated above which may slow the process. The management of this process would require increased officer staffing capacity over and above the current capacity set aside for BSF.

7 Proposals for the new school's federative arrangements

- 7.1 Whichever site is chosen, work to secure the success of the new school needs to be taken forward. As reported to Mayor and Cabinet on 27 September, the advent of the new school has required a review of Lewisham's federative structures. Given its size, ensuring strong collaborative arrangements for the new school is particularly important to allow pupils to have access to a breadth of tailored provision. The Borough's federative structures have been and will continue to be the cornerstone of Lewisham's significant improvements in secondary school standards. The review of the federations is important, not only to secure the new school's success, but also to ensure that other schools are not negatively affected by the new school's introduction into the system and its subsequent success.
- 7.2 It is proposed that the new school federates with Prendergast School, under the executive leadership of Prendergast. It is also proposed that this comprises a 'hard' federation – ie. that the schools report to a single governing body. Prendergast is close to all the sites under consideration and is currently not formally part of a federation, although it works closely with the other groups of schools in the Borough. A hard federation between Prendergast and the new school would secure the confidence of residents and the success of the new school. In addition it would contribute positively to the continuing development and improvement of Prendergast School. The staff of that school would benefit from the development opportunities afforded by the federation and pupils would have access to greater curriculum breadth, including in relation to the enlarged mixed sixth form being developed at Prendergast through BSF. Our intention is for the new school to be a science specialist school which would complement the MFL and music specialisms at Prendergast.
- 7.3 While beneficial to the new school and to Prendergast School, it is important to consider the impact of such a strong federation on other schools in the Borough. The school most likely to be negatively affected is the nearby Crofton School which is currently facing challenging circumstances and has not been a school of choice for local parents. A strong school improvement programme is currently underway at the school and its recent OfSTED report praised the new leadership team which is tackling the issues at the school. Crofton is currently being rebuilt as part of the Grouped Schools PFI programme. It is due to open in its new buildings in September 2008. It will be critical that a re-branding of the school takes place, to emphasise to local parents the strength of educational offer available at the school. Without this, even given improvements at the school, its current reputation is unlikely to allow the school to make the leap that is necessary and there are dangers that the school could fall further into difficulties. Following discussion with Crofton and Prendergast heads and governing bodies, as well as with the Leathersellers livery company which supports Prendergast, it is proposed that the new hard federation includes the re-branded Crofton School from 2008. This would establish a high-profile new three-school Prendergast/Leathersellers federation in the centre of the borough.

7.4 While early discussions have taken place around these proposals, the governing bodies and the Leathersellers have not yet made a formal proposal for consultation. Regulations require this would be the first step in establishing a hard federation. Leathersellers are due to consider the proposal in early November. More detail on the legal process required to establish the federation is set out under the legal implications of this report. If a site other than Ladywell Leisure Centre is chosen, these consultation processes would need to take place alongside the approvals required to open a new school. Wide consultation will be both necessary and important, particularly with other secondary schools to ensure we are clear about the impact of the proposal across the system, including the existing Crossways federation of which Crofton is currently a part. Governors at Crossways Academy for example are concerned about the potential impact on their numbers if Crofton has established links with the Prendergast sixth form as well as with Crossways.

8. Risks of each of the options

8.1 The risks associated with this decision concern changes to the BSF programme, the need to gain planning consent, the pressure on school places, the complexity and difficulty of the approvals process and concerns about the levels of additional funding required. Given the risks associated with the Lewisham Hospital site, the two main options are to consider moving to the Lewisham Bridge site or staying with the current preferred option of the Ladywell Leisure Centre site. The main risks associated with each of the sites are set out in Appendix 1 and are examined in more detail in the following paragraphs.

Ladywell Leisure Centre option

8.2 This is the current preferred site. The approval process has been completed with the SOC having made a decision in favour of the site in March 2006. Planning risks exist with the site as the existing use is leisure and, although the LDF issues and options paper for Lewisham Town Centre identifies it as a preferred site for a secondary school it would require GLA and GoL approval. It is considered that the planning process could also be the subject of objections and potential delay that could impact on the proposed opening date of September 2009. The process of working up designs for planning consideration are linked to the BSF tender process and this inter-relationship also poses a risk. These risks could result in delay to the scheduled 2009 opening, and the increase in places and would have an adverse impact on construction costs within BSF.

Lewisham Bridge option

8.3 A change of site and a proposal for an all through school would require a new process and would take between 12-16 months to complete. This is a complex area of work and requires decisions from the DfES and others, outside of the Council's control, to ensure that this can take place within the timescale suggested. Officer capacity would be required to deliver these changes and there is clearly a risk that decisions would be delayed.

8.4 The site is currently in education use although the co-location would be a significant intensification and would constitute a planning risk. The current plans for Sundermead and the Loampit Vale site have been subject to local consultation but this has not included a secondary school.

- 8.5 The Lewisham Bridge option is significantly more expensive as it involves rebuilding a primary school and as the secondary element will be a year later in delivery it incurs additional inflation costs. This would effectively pre-commit the Council's Capital Programme and would mean that capital resources are not available for other projects.
- 8.6 The earliest the additional places could become available on this site is September 2010, probably a year later than the Ladywell option.
- 8.7 There are significant risks in the BSF programme commensurate with its scale and complexity. This option requires a change to the programme and the submission of a revised Strategic Business Case to PfS. Delay to the programme will add to affordability concerns, as set out in the financial implications, and the delay to the construction of the new secondary school would cost an estimated £1m in inflation. These costs have to met within the overall affordability envelope for the programme.
- 8.8 A summary of the key advantages and disadvantages of the options are set out below:

Ladywell advantages and disadvantages

Advantages	Disadvantages
Earliest implementation 2009. Latest 2010	May not obtain planning permission. GLA/GOL may not approve. Delay possible
Organisation approvals done and duty to implement	Pool closes 2007. No pool in Lewisham Town Centre till 2010 at least, though Downham and Wavelengths sooner
Only remaining issue is that planning permission needed	Strong lobby may challenge planning decision if positive. May not succeed but could delay, if final planning decision is late
Included in current SBC	Designs and planning would be done at risk, because at preferred bidder stage
Cheaper option.	
What bidders are expecting in BSF	
Access satisfactory	
Procedurally most straightforward and demands less resources to implement	

Lewisham Bridge advantages and disadvantages

Advantages	Disadvantages
Access good– very close to Lewisham Station and DLR	Requires revocation of original SOC decision, following consultation. Decision out of Council's hands
Allows for development of through school with educational advantages associated	Subject to revocations/requires new approvals process for closure of Lewisham Bridge Primary and establishment of through school. Process requires following competition regs – additional 4 months – unless exemption granted by Secretary of State
Planning designation – already in educational use. No departure from UDP	Even with exemption still need consultation and SOC/Adjudicator decision
Continuity of leisure provision at Ladywell until replaced in Sundermead	Staffing resources associated with approvals' requirements intense
Secures new primary facilities	Interplay of planning and SOC timetable uncharted, needs very careful management
	Planning – intensification of use

	Cost – requires funding for primary provision at expense of other priorities and assumes use of Ladywell receipt
	2009 not achievable. 2010 earliest possible, 2011 if slippage. Inflation impact.
	SBC revision required
	Opposition already from parents
	Loses one form of entry at primary at time of expansion of Sundermead, though places nearby sufficient
	Decant – disruption to school and costs

9. Financial Implications

- 9.1 The financial implications of the report contain information that is commercially sensitive in that it relates to the relative value of sites and the estimated costs of construction. The information is contained in the Part 2 agenda.

10. Legal Considerations

- 10.1 Consultation for the establishment of a new school began in 2001. At that time the procedure for the establishment of a new school was set out in Section 28 School Standards and Framework Act 1998. This entailed a period of informal consultation, consideration by the Mayor and Cabinet of responses to that, together with the formulation of proposals for inclusion in a statutory notice and a period of statutory consultation. The statutory notice by law had to include, amongst other things, details of the proposed site, whether it is to be a community, voluntary or foundation school, whether it is to be single sex or mixed and its size
- 10.2 Once a statutory notice is published under the 1998 procedure, there is then a period for objections to be made. If objections are made and not withdrawn, the matter needs to be referred to the independent School Organisation Committee.
- 10.3 On 16 March 2006, the School Organisation Committee approved the establishment of a new 4 form entry community secondary school on the site of Lewisham Leisure Centre, subject to funding being available and the granting of planning permission. The Council is now under a statutory duty to implement the proposals approved by the SOC.
- 10.4 Were circumstances to arise which meant that the Council could not comply with the decision of the SOC within the timescale proposed, it can apply to the SOC for a modification (for example if site conditions meant that the school could not open until 2010). The SOC would then carry out consultation with prescribed persons and then decide whether to modify the timescale. It is not possible in law for a modification to be used to substitute new proposals for those which have been consulted on, published and in this case approved by the SOC.
- 10.5 If circumstances were such that the Council did not wish to proceed to build the school at all in accordance with the SOC decision, it must consult interested parties and then publish fresh proposals to be relieved of the duty to implement. For the revocation to be approved the SOC must be satisfied that implementation of the proposals would be unreasonably difficult, or that circumstances have so altered since approval was given, that such implementation would be inappropriate. There would be

some arguments to support the second of these grounds (eg. the strength of consultation responses, the advice of CBRE, the prospect of an all-through school on the Lewisham Bridge site) but the decision will not be in the Council's hands.

Relevant legal developments

- 10.6 Section 70 Education Act 2002 introduced a new procedure for the establishment of additional secondary schools. Transitional provisions meant that this new procedure did not apply to the process relating to the establishment of a new school on the Ladywell site as the consultation about that began prior to the introduction.
- 10.7 The 2002 Act requires that an authority wishing to open an additional secondary school must first invite other interested parties to put forward proposals for doing so. A period of 4 months must be allowed for interested parties to submit their proposals and the competition is decided by the SOC (or the Schools Adjudicator in the absence of a unanimous decision by the SOC).
- 10.8 Further statutory provisions were introduced in Section 66 Education Act 2005, which came into force on 1st September 2006. Section 66 requires that a competition must be held whenever statutory proposals are needed for a new secondary school and not only when they are additional. So, this requirement applies to replacement as well as additional new schools.
- 10.9 If the proposal for a new school also entails associated closure proposals, then the authority should consult on the closure proposals at the same time as it consults on the need for the replacement school. The authority then publishes its closure proposals at the same time as proposals are received for the new school.
- 10.10 Under the 2005 Act, all proposals are to be decided by the SOC, or if SOC is not unanimous, by the Schools Adjudicator who will decide all proposals together.
- 10.11 This new procedure will clearly have implications for the BSF programme, as it is rolled out on a national basis. The general position for BSF authorities is that once they have completed their estate planning and submitted their strategic business case to PFS, they will be required to publish a preliminary notice inviting proposals for each new school. The competition procedure set out under the 2002 and 2005 Acts would then usually apply. However by virtue of Section 28A SSFA (inserted by Section 65 Education Act 2005,) the Secretary of State has power to determine whether or not a competition process will be necessary.
- 10.12 Guidance issued by the DfES in October 2006 indicates that a competition will be necessary whenever there are statutory proposals for a new secondary school (unless the Secretary of State, exceptionally, determines otherwise)
- 10.13 The Guidance states that a competition will be required in the following circumstances:-
 - when a reorganisation of the authority's secondary schools includes the establishment of a new secondary school
 - on the amalgamation of 2 or more schools to create a new secondary school

- provision of a new secondary school in response to population growth

10.14 The same Guidance indicates when the Secretary of State might consider that a competition need not take place. There are a number of circumstances set out in the Guidance that are not relevant to the current situation. However one scenario may be pertinent. The Guidance states that the Secretary of State might consider that a competition need not take place *“where robust evidence has been provided that running a competition might have an adverse effect on delivery of a local BSF project, and that there is no practicable action an authority can take to prevent this (for early wave BSF local authorities only)”*

10.15 The Secretary of State may consider granting early wave BSF authorities an exemption from the new school competition rules, if they can demonstrate that the rules will result in a severe, unavoidable delay to the project affecting the affordability of it. The Guidance goes on to say, however, that it is expected that few local authorities will apply for such exemption. It is expected that a Ministerial decision on exemption would be available about 6 weeks after submission of a formal application.

10.16 General guidance on applying for an exemption states that in submitting the application to the Secretary of State, the local authority must provide statements on the views of interested parties on the preferred plans for the new school and also any consultation carried out as to whether there might be any interest by other proposers. It goes on to say that local authorities would be well advised to consult on these matters as soon as possible so that they can provide suitable evidence to support their application to the Secretary of State. So, it is clear that generally it is expected that there will have been consultation on the proposal to apply for an exemption before the application is made. If, subject to the outcome of the consultation it appears that the Council may fall within the anticipated ambit of an exemption, the decision is for the Secretary of State and out of the Council's hands.

10.17 It follows then that there are 3 pertinent legal issues relating to school organisation:-

a) If the Council seeks to change the proposed site for the new school from Lewisham Leisure Centre to any other, does it need to begin a new statutory process afresh?

Yes. Both the Lewisham Bridge and the University Hospital Site have not been consulted on at all. The change of proposed venue is too significant to qualify as a proposed modification. It would represent a fresh proposal. It is not possible to use the modification process to put into effect what is essentially a new proposal. To do so may be susceptible to legal challenge.

b) If the answer to a) is yes, which is the applicable procedure?

The applicable procedure is that set out in Section 66 Education Act 2005 – i.e. the competition procedure requiring an invitation for proposals, unless an exemption can be obtained from the Secretary of State. If an exemption is forthcoming the procedure to be followed will be the same as that used previously, but starting from scratch again and requiring revocation to be endorsed by the SOC.

c) If the answer to a) is yes, how is the decision made and by whom?

Under the current law, whether or not an exemption is granted, the decision will be made by the School Organisation Committee or the Schools Adjudicator (unless as seems unlikely there are no proposals or no objections). There are provisions contained in the Education and Inspections Bill which is due to become law later this year, abolishing the SOC. However, the DfES has indicated that there is to be a round of consultation thereafter, on the content of regulations and guidance determining what measures will be put in place to replace the SOC. They also indicate that the changes to the school organisation decision making arrangements will be in place sometime from May 2007.

- 10.18 Section 24 Education Act 2002 permits the federation under a single governing body of two or more but not more than 5 maintained schools subject to compliance with the prescribed procedures. This includes consultation with interested parties. The impact of federation is that on the federation date the governing bodies of the federated schools are dissolved and the governing body of the federation is incorporated. Schools within a statutory federation nevertheless remain individual schools and retain their existing category. The procedure for the establishment of a statutory federation is the responsibility of the individual governing bodies wishing to federate. In the case of a new school, where no temporary governing body has been established such responsibilities will fall to the proposer to progress.
- 10.19 Counsel advises that it is legally possible to include a new school in a proposed statutory federation in anticipation of the new school opening, and consultation may begin once proposals have been published. In the event that there is consensus between the suggested governing bodies and the proposer (in the absence of a temporary governing body for the new school) the timetable for the establishment of a federation is short entailing:
- 1) a resolution of the governing bodies concerned that they support the federation in principle and agreement to consult
 - 2) a 6 week period of consultation
 - 3) consideration of responses by those governing bodies and a decision to federate
- 10.21 It would be possible for the governing bodies of Prendergast and Crofton, if they wish, to ask the Council to conduct the consultation exercise on their behalf, to avoid separate consultation by three separate bodies. However, the decision on whether to federate remains with their governing bodies, (and the Council as the possible proposer of the new school).
- 10.22 As with all decisions, the decision in this matter must be made on a consideration of all relevant considerations and disregarding irrelevancies. On that basis, the decision must then not be so unreasonable that no reasonable authority could have reached it. The Head of Law advises, having sought Counsel's advice that the contents of this report provide a robust decision making basis for either of the options presented in the recommendations, provided that the Mayor is satisfied that the risks and costs associated with the option concerned are outweighed by the potential benefits.

11. Crime & Disorder Implications

The two preferred sites are within a short distance of the town centre. The key issues for secondary schools tend to be immediately after school where good access to

transport aids safe and swift travel home. The Lewisham Bridge site has better access to transport links (rail, DLR and bus) and this should assist swift departure from the immediate vicinity. The partnership work with the schools, Crime Reduction, Police, Transport and the Youth Service should help students to travel safely to and from school.

12 Environmental Implications

- 12.1 The renewal of the secondary school estate will reflect the Council's aim to achieve high standards of design for municipal buildings and would be expected to meet 21st Century environmental standards in accordance with the Council's Procurement policies.

13 Equalities Implications

- 13.1 It is essential that children have access to good secondary schools within a reasonable distance from their homes. The BSF programme aims to ensure that a high quality secondary school place is available for all Lewisham residents who seek one. It is acknowledged that some groups have been traditionally excluded from the education system and specific action will be taken to ensure social inclusion when deciding the location and organisation of a new school. Particular attention will be paid to the potentially adverse impacts on the grounds of race, gender and disability in the areas of location and transport, admissions, design and accessibility and curriculum. Impact and risk assessments will be carried out in these areas to ensure that school developments are accessible within the given parameters of need and affordability.

14 Conclusions

- 14.1 In any programme of the scale and length of Building Schools for the Future it is essential to constantly review key elements. Indeed it is a requirement for the Council and subsequently the Local Education Partnership (LEP) to annually review the Strategic Business Case. In this case a further review of site options, deliverability and risk has confirmed that while additional sites were identified, they were ruled out on a combination of factors. The Hospital while fulfilling some of the criteria, has a number of significant risks, especially timely deliverability and affordability. Accordingly it is officers' view that it be rejected as an option.
- 14.2 As set out above it is believed that much has changed regarding regeneration certainty in the Town Centre such that had this been the position in 2002 and 2004 then it is likely that the recommended site would have been Lewisham Bridge.
- 14.3 Therefore, consideration centres on the deliverability of the Ladywell site in 2009, where there are real planning-related risks as against the deliverability in 2010 of a new all through 3-16 integrated school on the Lewisham Bridge site. In both cases it would be expected to deliver the school as part of a federation.
- 14.4 The relative advantages and disadvantages of the two options are set out above. The Ladywell site has all key educational processes resolved and the most significant risk is planning consent which will necessitate a referral to both GOL and GLA.
- 14.5 The Lewisham Bridge option requires a complex process of agreement from SOC and the DfES, most of which is largely out of the Council's direct control. These include the revocation of the existing SOC decision, the closure of Lewisham Bridge primary school

and proposals for an all through school. The planning risks appear less problematic involving a more intensive use of the current education facility.

- 14.6 In terms of tackling the shortage of places the earliest a school could be open in 2009 (Ladywell site) but this requires the BSF tendering process to deliver a partner to secure planning permission before next Summer, while Lewisham Bridge would, at best, be a year later.
- 14.7 While not an explicit site evaluation criterion, continuity of leisure provision can only be served by either delaying construction on Ladywell until 2010 at the earliest (assumes new facility open 2010), or siting the new school at Lewisham Bridge.
- 14.8 The Lewisham Bridge option re-provides a new primary school at a cost of £8m. This effectively commits all available resources in the Capital Programme and would prevent other high priority schemes coming forward. This option also requires the re-submission of the Strategic Business Case.

Further Information

For more information about this report, please contact Malcolm Smith Executive Director for Regeneration on ext 46931 or Steve Gough Director of Programme Management & Property on ext 48885.