

PART 1 - PUBLIC

Decision Maker: Education Portfolio Holder

Date: 22 January 2014 Care Services Policy & Development Scrutiny Committee
30 January 2014 Education Policy & Development Scrutiny Committee

Decision Type: Non-Urgent Executive Non-Key

Title: DAY NURSERY PROVISION: OPTIONS FOR FUTURE DELIVERY

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Ward: Penge and Cator; Orpington

1. **Reason for report**

The Education Policy & Development Scrutiny Committee considered a report in March 2013 (Report ED13045) in relation to nursery provision directly run by the Council, located within the Blenheim and Community Vision Children & Family Centres. The report undertook to move day nursery provision to a trading account basis and to undertake an options appraisal for the future delivery of the nurseries. This report summarises the outcome of the options appraisal and identifies further work to develop the business case for the recommended option.

2. **RECOMMENDATION**

- 2.1 **The Care Services PDS committee are asked to comment on the proposals contained within this report;**
- 2.2 **The Education PDS committee are asked to comment on the proposals contained within this report;**
- 2.3 **The Education Portfolio Holder is asked to:**
- i. **Note the outcome of the options appraisal;**
 - ii. **Consider the recommendation that Option 1 (Do Nothing) and Option 2 (Closure of the Day Nursery Provision) are rejected;**
 - iii. **Consider the recommendation to further develop the Business Case for Option 3 (Market Testing of Nursery Provision), the outcomes of which will be presented to the Portfolio Holder at a future PDS meeting for a final decision.**

Corporate Policy

1. Policy Status: Existing policy. Childcare Act 2006
 2. BBB Priority: Children and Young People. Excellent Council.
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Financial

1. Cost of proposal: Estimated cost To be Confirmed
 2. Ongoing costs: N/A. Ongoing staffing costs, and associated long-term expenditure such as pension liabilities, are likely to be reduced in the event of staff transferring to another organisation
 3. Budget head/performance centre:

Community Vision Nursery	121602
Blenheim Nursery	121601
 4. Total current budget for this head: £0 (controllable)/ £156k (total cost of service)
 5. Source of funding: Revenue Support Grant
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Staff

1. Number of staff (current and additional):

Blenheim	9.15 FTE
Community Vision	14.55 FTE
 2. If from existing staff resources, number of staff hours: n/a
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Legal

1. Legal Requirement: <please select>
 2. Call-in: Call-in is applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
Registered places available per day total 75 across both nurseries (42 at Community Vision and 33 at Blenheim).
Around 130 children currently attend, of whom around 50 are funded through social care purchased places.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes.
2. Summary of Ward Councillors comments:

3. COMMENTARY

Background

- 3.1 A paper was considered by the Education Policy Development and Scrutiny Committee on 19th March 2013 (Report ED13045) in relation to day nursery provision directly run by the Council, located within the Blenheim and Community Vision Children & Family Centres.
- 3.2 The paper proposed that both nurseries be placed on a trading account basis to gain a better understanding of the operating costs to the Council of the direct provision of nursery places and the extent to which this was offset by income generation.
- 3.3 Concurrent with operating on a trading account basis, the service undertook to complete an options appraisal for the future delivery of the nursery provision, focusing on the following options:
- Closure of both nurseries;
 - Market testing of the nursery provision;
 - Market testing of the nursery provision retaining a guarantee of purchased places for referrals from Children's Social Care.
- 3.4 The two nurseries provide full day care for children aged 0-5 and are open for 51 weeks a year. They are located in Orpington (Blenheim) and Penge (Community Vision), with the majority of users residing in wards considered areas of deprivation on national measures. They are situated within the Blenheim and Community Vision Children and Family Centres – many of the families using the nurseries also access provision offered by the Centres. Places are funded through a combination of the Department of Education Free Early Education (FEE) grant which funds 15 hours per week during term time for all three and four year olds and eligible two year olds, together with income generation from fees charged to families for the balance of their childcare needs. From September 2014, the eligibility criteria for free early years education for two year olds will increase with 40% of the cohort estimated to be eligible, up from the current 20%.
- 3.5 In addition, the two nurseries provide an estimated equivalent of 20 full time (or 48 part time) places for children referred, and funded, by Children's Social Care. The Children's Social Care Team provide early intervention support to prevent family breakdown (and the risk of children entering care) by arranging and funding nursery places primarily through the Blenheim and Community Vision nurseries. Children's Social Care fund the additional cost of hours required above the 15 hours free entitlement and provision outside of term time.
- 3.6 The places provided by the nurseries for Children's Social Care referrals are, essentially, a block contract arrangement. The nurseries have, to date, been allocated a specific budget (now recharged to Social Care) to fund referrals from Children's Social Care. The basis of the budget allocation appears to be historical (i.e. there is no clear correlation between the budget amount, the volume of referrals made and the cost of the provision) and the nurseries accommodate referrals as flexibly as possible. A higher level of support is provided by the day nursery for Social Care referrals, including breakfast or lunches, hands on family support and involvement in Social Work case work meetings.
- 3.7 The nurseries currently provide an overall total of 75 full time places (baby places, two year olds places and three/four year old places) with the profile of use detailed in Table 1. A further nine baby places could be provided at the Community Vision nursery (by making use of a room currently not utilised). The capacity is based on staffing ratios (based on Ofsted guidelines) with the capacity affected by the relative volumes of the different age ranges that access the

nurseries. Capacity could therefore be increased through staffing adjustments although this will still be limited by physical space at the nurseries. Under the previous guidelines for capacity, based on floor space, Blenheim had capacity for 33 and Community Vision had capacity for 55. Both nurseries are rated as Good by Ofsted with the Blenheim nursery graded as having outstanding elements.

Table 1: Nursery Profile of Use October 2013

	Blenheim, Orpington	Community Vision, Penge
Full Time places available at the nursery per day	33	42
Total number of children who use the nursery	57	73
Children who access Funded Early Education (FEE)	29 (51%)	55 (75%)
Number of Social Care funded children (may also be FEE eligible)	18 (32%)	30 (41%)

3.8 Duties on the Local Authority in relation to nursery and early years provision are as follows:

- Duty to provide sufficient childcare for working parents (Childcare Act 2006);
- Duty to secure prescribed early years provision free of charge (Childcare Act 2006, amended by Education Act 2011);
- Duty to assess childcare provision (Childcare Act 2006);
- General duties to improve the well-being of children under 5 and reduce inequalities (Childcare Act 2006), ensuring early years' services are accessible to all families.

3.9 Specifically, the Childcare Act 2006, Section 8 states that the local authority may not provide childcare unless satisfied 'that no other person is willing to provide childcare' or that 'in the circumstances it is considered appropriate for the local authority to provide childcare'. However, this clause does not apply for children in need who are covered by the Children Act 1989, Section 18, which states that 'the local authority shall provide day care for children in need...aged five and under...as is appropriate'. However, this does not mean that the local authority must directly provide such provision.

3.10 In the first phase of the national children and family centre programme from 2004, emphasis was given on ensuring access to full day care in areas of deprivation linked to children and family centre provision which was one of the main reasons why council run nurseries were attached to these children and family centres. Subsequent guidance, together with the Childcare Act 2006, has relaxed this requirement.

Trading Account Operation

3.11 The two nurseries were moved on to a trading account basis from April 2013 with separate budgets established (elements of the nursery budgets were previously contained within the overall Children & Family Centre budget). The latest trading account position is shown as Table 2:

Table 2: Trading Account Position 2013/14

	Blenheim		Community Vision		Total	
	2013/14 Budget	2013/14 Projected Outturn	2013/14 Budget	2013/14 Projected Outturn	2013/14 Budget	2013/14 Projected Outturn
	£	£	£	£	£	£
Direct Costs						
Employees	213,140	232,080	325,310	287,150	538,450	519,230
Running expenses	64,020	65,080	53,010	64,170	117,030	129,250
	277,160	297,160	378,320	351,320	655,480	648,480
Income						
FEE & Private	-152,450	-235,020	-254,960	-274,960	-407,410	-509,980
Recharge Social Care Purchasing Budget*						
Children's Social Care	-124,710	-124,710	-123,360	-123,360	-248,070	-248,070
	-277,160	-359,730	-378,320	-398,320	-655,480	-758,050
Surplus(-)/deficit(+) before Non-Controllable Costs	0	-62,570	0	-47,000	0	-109,570
Non-Controllable Costs	56,950	56,950	98,750	98,750	155,700	155,700
Trading Account Surplus/Deficit	56,950	-5,620	98,750	51,750	155,700	46,130

* The total recharge of £248,070 relates to the purchasing budget of the Children's Social Care Team for the purchase of nursery places. See paragraph 3.13.

3.12 The move to a trading account indicates that nursery provision covers its controllable costs and operates at a surplus, based on income from FEE and private fees together with the recharges from the Social Care purchasing budget for the provision of nursery places for Social Care referrals. The surplus in turn covers the majority of non-controllable corporate recharges which would be present regardless of the provision being in place (i.e. if the provision was not in place the non-controllable costs would still be present but applied to other cost centres).

- 3.13 Approximately a third of the overall income for the nurseries is a fixed contribution via a recharge from the Children’s Social Care Purchasing budgets, i.e. Local Authority funded. The Children’s Social Care Purchasing Budget is a cost to the LA regardless of whether it is recharged to the Nurseries or whether places were to be purchased elsewhere. However, the surplus generated by the nurseries effectively reduces this cost to the LA.
- 3.14 In order to establish the true full cost recovery position of the provision, it is necessary to understand how the fixed contribution from the Purchasing Budget for Social Care referrals compares to the rates charged for all other referrals (taking into account the higher level of support provided to Social Care referrals). If the Social Care Purchasing Budget funds places at a higher rate the Local Authority is potentially subsidising the provision and the surplus level may be exaggerated. If the Social Care Purchasing Budget funds places at a lower rate, then the day nursery income potentially subsidises the Local Authority in providing for Social Care referrals – but at the same time, this impacts on the ability of the nursery provision to maximise its income potential. There are waiting lists for places at both nurseries which suggests the private and FEE income could increase if places were not blocked out for Social Care referrals.
- 3.15 Both nurseries charge the same rates – the nursery rates compared to the national FEE rates are shown in Table 3 below:

Table 3: Hourly and Daily Rates

	Blenheim/Community Vision Rates	National FEE Rates
Hourly Rate 0-2 Year Olds	£5.15	N/A
Hourly Rate 2-3 Year Olds	£4.65	£6
Hourly Rate 3-4 Year Olds	£4.15	£4 *
Daily Rate 0-2 Year Olds	£51.50	N/A
Daily Rate 2-3 Year Olds	£46.60	N/A
Daily Rate 3-4 Year Olds	£41.50	N/A

*average, the base rate is £3.66 but is normally topped up by supplements

- 3.16 The table indicates that the Local Authority provision is charged at a similar rate to the national rate for three and four year olds, but is charged at 23% below the national rate for two to three year olds.
- 3.17 Users are not charged at an hourly rate. Days are sub-divided into morning and afternoon sessions of five hours each. If a user accesses a session wholly contained within the morning or afternoon session, then they will be charged the set rate for the session (equivalent to the relevant hourly rate for five hours). However, if the hours accessed cut across both sessions, then a full day rate will be charged.
- 3.18 Providers of day care can charge any rate they wish for provision delivered over and above the fifteen hours free entitlement, based on what the local market will bear. The daily rate for provision across Bromley is estimated at between £40 to £60 pounds per day. The daily rates for the two Bromley nurseries (following a rates review and an increase in charges over the past three years to bring them more in line with market rates) range from £41.50 to £51.50 which indicates that Bromley is possibly towards the lower end of the price range. It is not possible to

confirm this as no formal benchmarking exercise has been undertaken recently to establish the range of fees charged across the borough and the relative position of Bromley nursery rates compared to these.

- 3.19 It may be possible to adjust prices still further and remain competitive within the market rates in Bromley and further reviews should be conducted to examine this. However, consideration will need to be given to the local communities that the provision supports – half of all current users of the nursery provision reside in neighbourhoods that are ranked as within the 20% most deprived nationally.
- 3.20 There are no specific rates charged for referrals from Children’s Social Care as the nurseries work to a fixed budget allocation (based on a historical allocation of budget as opposed to a budget determined on planned demand and set rates) without a clearly defined agreed volume of referrals and type of referrals. As a result, the equivalent actual rates charged will be variable depending on the volume and age categories of referrals and the number of vacancies held at any one time.
- 3.21 Detailed analysis needs to take place to establish the cost of funding Social Care referrals and whether it is at an appropriate level, based on the volume of referrals, the type of referrals, the level of support offered and the vacancy rates for this provision. This would need to take place regardless of which option is taken forward.

Sufficiency

- 3.22 There are around 850 Ofsted Registered Childcare providers in Bromley, of which the two nurseries are the only settings directly run by LBB as full time day care nurseries (the Local Authority also provides nursery provision attached to the Bromley Adult Education College, but these are primarily for the use of students, acting more in a crèche capacity, and do not operate on a full time basis). The Private, Voluntary and Independent (PVI) childcare market in Bromley is of a good standard with 83% of PVI providers rated as outstanding or good at their most recent Ofsted inspection. Funding for Free Early Years Education is only available to providers rated as Good or above for two year olds.
- 3.23 The Bromley Childcare Sufficiency Assessment (2011) states that there is only one day nursery available in Orpington – the Blenheim Centre itself. Other childcare options are mainly through child minders and pre-schools – child minder options are likely to be limited as only child minders rated good or outstanding are eligible for FEE contributions for two year olds; and there are no places for babies or two years olds at pre-schools. There are no other day nurseries within a mile and the closest day nurseries rated as good are located some distance away. While the nearest day nurseries have (currently) available places to accommodate the occupancy at the Blenheim, access to those places is likely to be restricted due to travelling distance. The Blenheim nursery currently operates a waiting list indicating demand for this provision.
- 3.24 There were 8 day care nurseries, including Community Vision, identified within the Sufficiency Assessment available in Penge. However only five others are currently rated as Good by OfSTED and therefore eligible for free early years funding. The other five nurseries do not have sufficient capacity to accommodate the volumes currently accessing the Community Vision nursery (each nursery was contacted to confirm their current occupancy and capacity). There is demand for provision at Community Vision with a waiting list for places.

Options Appraisal

3.25 The options to be considered, as indicated in the March PDS paper, have been amended to reflect a wider range of options that should be considered. The options considered for the future delivery of the Blenheim and Community Vision day nursery provision are as follows:

Option 1: Do Nothing

- 3.26 With the services now operating on a trading account, the initial data establishes that the income generated from service users and from places commissioned by the Children's Social Care Team fully covers the controllable costs of delivering the provision and provides a surplus which offsets a proportion of the fixed budget contribution by Social Care. The income also contributes to the premises and running costs of the Children and Family Centres, the costs of which would have to be fully borne by the Centres if the nursery provision was not in place.
- 3.27 The nursery provision supports our duty to ensure sufficient and accessible early years places for families and is currently the main resource in the borough in meeting our responsibilities for day care for children in need.
- 3.28 The option to continue direct delivery of the day nursery provision appears viable. However, this is based on less than one year's worth of trading account information. Should income decrease or costs increase, to an extent that full cost recovery is not achieved, the Local Authority would need to subsidise the delivery of day care provision from within its own budgets. The Local Authority is also subject to other costs relating to staffing, such as pensions and related on-costs. Although the current trading data is positive, it cannot be said with certainty that the full cost recovery position is sustainable in the long term. As stated in 3.13, further analysis of the cost of Social Care referrals needs to be undertaken to establish whether this budget subsidises, or is subsidised by, the nursery provision.
- 3.29 The Local Authority is not necessarily the best provider of such provision. The responsiveness of the provision, to increased demand for example, and its ability to maximise income may be limited by Local Authority procedures in relation to staffing and budget controls.
- 3.30 In considering this option the overriding factor is that the policy is clear. The Local Authority is not expected to provide such provision unless it is satisfied that no other person or body is willing to do so. There is no evidence that another body would not be willing to provide such provision and therefore the Local Authority is obliged to test the market to establish whether there are other willing providers. The obligation on the Local Authority to ensure day care for children in need as appropriate does not affect this approach as this requirement can still be met without the Local Authority being the direct provider of this provision.
- 3.31 Table 4A outlines the overall financial position of the option of doing nothing (Option 1):

Table 4A: This table outlines the overall financial implications of ‘doing nothing’

	Current Projected Budget Position	Notes
Nursery Direct Costs		
Employees	519,230	
Running Expenses	129,250	
Nursery Income		
FEE & Private	-509,980	
Social Care Purchasing Budget		
Recharge to Nurseries	-248,070	The Social Care purchasing budget is recharged to the nurseries as income.
Controllable Budget	-109,570	This surplus effectively subsidises the cost of the Social Care Purchasing Budget.
Cost Implications to the LA	£0 - no additional cost to current position	

3.32 Officers do not recommend this option to the Portfolio Holder for Education as the relevant policy obliges the Local Authority to satisfy itself either that another person or body is not willing to provide the provision or that in the circumstances it is appropriate for the LA to provide the provision directly. Further investigation of Option 3 will provide evidence to establish both.

Option 2: Closure of Both Nurseries

3.33 The Local Authority meets its duty to ensure sufficiency for childcare provision mainly through supporting the market of local private, voluntary and independent childcare providers in the borough. The exceptions are the two nurseries run by the Local Authority itself (together with the nursery provision attached to Bromley Adult Education College). Therefore it may be feasible for the Local Authority to withdraw its day care nursery provision entirely and allow the local market to meet the need.

3.34 As outlined in paragraphs 3.21 to 3.23 above, the Early Years team do not believe there is sufficient capacity in the areas of Penge and Orpington (within reasonable travelling distance) to meet our sufficiency requirements should the 75 places available via the Blenheim and Community Vision nurseries be withdrawn immediately. To prematurely withdraw this provision without taking steps to work with, and develop, the local market to make up the shortfall of places could mean the Local Authority would be at risk of not meeting its sufficiency duties and therefore potentially open to challenge in such a decision. Market development of this kind is likely to be a long term approach.

3.35 As the two day care nurseries run by the Local Authority are the main referral route for Children’s Social Care, the Local Authority would also be at risk of not meeting its obligations to ensure sufficient day care provision for children in need. The Children’s Social Care Team report that there are risks in managing referrals wholly through a market approach as their need for childcare places is mainly reactive, rather than planned, due to the nature of the client group they are working with. They report that places in childcare providers are often already allocated as most families will plan accordingly and book places in advance. As a result, they have

expressed concern that they may have difficulties in obtaining timely childcare places as required for the families they are working with without the facility to block book places as per their current arrangements with the Blenheim and Community Vision nurseries.

3.36 The option to immediately close the nurseries would also have financial implications. The trading account data indicates that the income generated by the nurseries, together with the recharge from the Social Care Purchasing Budget, fully recovers controllable costs, and delivers a surplus. To cease delivery would remove income that contributes to the cost of the Social Care Purchasing budget. There would be financial implications for the Children and Family Centres which would be required to cover all premises costs from within their budgets, whereas currently the day care nursery provision contributes to the overall premises costs through income generation. These premises costs may be mitigated by considering alternative uses for the space vacated by the day nursery provision, such as through rental income – however, it is not currently clear what rental options are available (there are restrictions on the use of the site, see paragraph 5.6) and further investigation would need to be undertaken. Finally, there will be immediate costs to the Local Authority in terms of redundancy costs for the staff involved, although this would be one off cost.

3.37 Table 4B outlines the overall financial position of closure of the nurseries (Option 2), using current and equivalent financial information:

Table 4B: This table outlines the overall financial implications of closure of both nurseries

	Current Projected Budget Position	Equivalent Closure Position	Notes
Direct Costs			
Employees	519,230	0	
Running Expenses	129,250	53,000	Residual Premises Costs, now charged to Children & Family Centre budgets – this may be mitigated by income derived from alternative use of premises
Redundancy Costs	0	tbc	Closure will incur one off redundancy costs
Income			
FEE & Private	-509,980	0	
Social Care Purchasing Budget			The cost of the Purchasing Budget could potentially rise or fall by purchasing through the open market.
Recharge to Nurseries	-248,070	0	
Controllable Budget	-109,570	53,000	
Cost Implications to the LA £162,570 per annum - additional cost to current position. In addition there will be one off redundancy costs. The additional cost may reduce if income is derived from alternative use of premises.			

3.38 Therefore, officers do not recommend this option to the Portfolio Holder for Education because of the potential negative financial and sufficiency implications.

Option 3: Market Testing of Nursery Provision

- 3.39 The local market of private, voluntary and independent providers of day care is well developed and of a good standard. Given that the day nursery provision at Blenheim and Community Vision is well established and indications are that it is operating at full cost recovery, it is feasible that alternative providers will be willing and capable to take over the operation and management of this provision. This could be established by inviting providers to submit bids for the delivery of the provision through a tendering process. This would meet the requirements of the legislation in relation to childcare by ensuring that the Local Authority is not the provider of childcare if it is established that there are other willing parties to meet the service need.
- 3.40 The proposed outcome of a tendering process would be to enter into a concession agreement for the delivery of services. Concession agreements mean that:
- The contractor must bear the cost of service provision;
 - The contractor must receive fees paid by third parties for using the service; and
 - The contractor must bear a level of market risk for use of the service.
- 3.41 The characteristics of a concession agreement apply to the day nursery provision. As a concession agreement it would be subject to a 'lighter' procurement process. A concession agreement would typically be a long-term contract arrangement and therefore it is recommended that any such arrangement should be entered into for a minimum of five years.
- 3.42 A tendering process to enter into a contract for services to deliver the provision is not recommended through this option as this would mean that the Local Authority remains as the direct provider of the provision, albeit through a third party, based on a contract price (with additional third party overheads) for the delivery of the service.
- 3.43 In entering into a concession agreement, the Local Authority will be inviting providers to submit a price for awarding the concession to the third party. In addition, arrangements for use of the premises would need to be finalised including agreed rental charges. At present utilities at the premises are shared between the nurseries and the Children and Family Centres inside which they sit. A decision about the equitable division of these costs and setting rent charges for the nurseries will need to be established as part of the market testing process. The estimated total rental value for the two nurseries is £40k pa (Community Vision £22,500, Blenheim £17,800).
- 3.44 In transferring the operation of the service via a concession agreement, TUPE may apply to staff currently employed by the Local Authority in the delivery of this service. In the event of the transfer of staff, the Local Authority would also transfer the associated liabilities and risks, such as pension liabilities.
- 3.45 The Children's Social Care team recommend that arrangements for a block contract, or appropriate equivalent arrangement, to accommodate Social Care referrals is included within any option for the future delivery of the day care provision at the two nurseries, funded from the Children's Social Care Purchasing Budget. The price for a block contract arrangement can be included within the concession price for the delivery of the nursery provision. As indicated in 3.20, detailed modelling on the level of service, the cost of the provision and the volume (to minimise vacancies) will need to be undertaken as part of the market testing process to establish whether there are any potential for savings against this current budget.

3.46 The current data on the trading account for the nursery provision shows that it is operating at a surplus of £110k. The surplus therefore effectively contributes to the £248K Purchasing Budget for Children’s Social Care places. The financial risk to the Local Authority is whether the income generated from a concession agreement will be sufficient to match the current surplus currently made by income generation from the nurseries.

3.47 The potential net price of the concession agreement will include the price received for the operation of the concession (i.e. based on the ability to generate income), the price paid for the delivery of a block arrangement for Social Care referrals and the rental charge. This is illustrated in Table 4C below based on like for like assumptions against the current trading account data.

Table 4C: This table outlines the overall financial implications of a concession arrangement

	Current Projected Budget Position	Equivalent Concession Position	Notes
Direct Costs			
Employees	519,230	0	The provider will bear employee costs
Running Expenses	129,250	-40,000	The provider will bear running costs, will be recharged for premises costs and will pay rent
Income			
FEE & Private	-509980	0	The provider would receive the income.
Concession Fee	0	tbc	The potential concession fee will be established through tendering based on the income potential of the provision
Social Care Purchasing Budget			The cost of a block contract for Social Care referrals will be reviewed.
Recharge to Nurseries	-248,070	0	
Controllable Budget	-109,570	-40,000	
Cost Implications to the LA £69,570 per annum - additional cost to current position. The additional cost may be reduced by concession fee, if any.			

3.48 A concession arrangement, assuming that the cost of the block contract for Social Care referrals is unchanged and assuming a zero value for the concession price, will result in an additional cost to the Local Authority of £69,570. However, this may reduce dependent upon the price agreed for the delivery of a block contract; and the price agreed for the delivery of the concession based upon its potential to increase income above current levels.

3.49 This option is recommended to the Portfolio Holder for Education as it meets the requirement of the Local Authority to satisfy itself as to whether there are alternative providers of this provision. However, the Business Case for the option is not proven and further work needs to be undertaken to establish the appropriate cost of a block contract arrangement for Social Care referrals and to establish the income generating potential of the nursery provision for an external provider which would establish the potential value of a concession arrangement.

Recommendations

- 3.50 Option 1 (do nothing) and Option 2 (closure) are not recommended to the Education Portfolio Holder. Option 1 does not meet the provisions of the Childcare Act in that the Local Authority should not provide nursery provision unless it is satisfied that it is appropriate to do so (as set out in paragraphs 3.9 and 3.32). Option 2 will have financial and sufficiency implications for the Council and so it not recommended.
- 3.51 Option 3 is recommended as it meets the requirements of the Childcare Act in establishing whether alternative persons or body's are willing to provide the provision. However, this option potentially incurs additional cost to the LA and the Business Case is not proven.
- 3.52 It is recommended to the Education Portfolio Holder that officers conduct further work to establish the Business Case for option 3 (focusing on the commissioning costs of Social Care nursery referrals and the income potential, and therefore potential concession price, of the nursery provision) with the outcome of presenting a final report on the viability of Option 3 at a future PDS meeting.

4. POLICY IMPLICATIONS

- 4.1 The proposed plan reflects the Building a Better Bromley 2020 vision, and both the local and national policy direction for Education Services.

5. FINANCIAL IMPLICATIONS

- 5.1 The nurseries moved on to a Trading Account from 2013/14. The costs of running the nurseries have been separated out from those of running the Children and Family Centres. Since April, occupancy has increased, and income has increased accordingly. The trading account budgets and projected outturn for 2013/14 are shown in Table 2 above
- 5.2 The 2013/14 budgets were not set up as full cost recovery trading accounts, so the recharges (overheads) are not covered by the income. The projected outturn figures reflects that before recharges the nurseries are expected to generate a total surplus of £110k, and are running at a projected cost of £46k once overheads are taken into account.
- 5.3 At present utilities are shared between the nurseries and the Children and Family Centres inside which they sit. A decision about the equitable division of these costs and setting rent charges for the nurseries will be taken as part of the market testing process. The estimated total rental value for the two nurseries is £40k pa (Community Vision £22,500, Blenheim £17,800).
- 5.4 Assuming the full rental value can be realised, with £40k rental income across the two sites, the council would potentially lose £70k of the surplus income currently being generated if the service was delivered by an external provider at current costs.
- 5.5 The recharge from Children's Social Care totalling £248k provides for 48 part-time nursery places per year. If the service was provided externally then the budget would be available to purchase these places in the wider external market. It is likely that Social Care would continue to purchase places in advance at the two nurseries for the most vulnerable children, with the option to spot purchase additional places according to demand, either at the two nurseries or elsewhere. This increased flexibility may result in savings for Social Care, depending on the pricing of places. At the same time, spot purchasing places with other providers may prove

more expensive. Further modelling needs to take place to establish the appropriate price and arrangements for a block contract as part of a concession agreement.

- 5.6 There are restrictions on the use of the Children and Family sites in which both nurseries are based, as they were built using funding from the Department for Education’s Sure Start programme. Use of these sites for anything other than the provision of services for children aged 0-5 and their parents and carers could result in a potential liability to repay some or all of the Sure Start grant used to build the centres (approximately £910k for Blenheim and £1,075k for Community Vision).

6. LEGAL IMPLICATIONS

- 6.1 The Council is required to comply with Section 6 of the Childcare Act 2006 to secure sufficient childcare within the area for parents who are in education, work or training. No changes to this duty are proposed in the Children and Families Bill currently awaiting Royal Assent.
- 6.2 The nurseries are Part B Services for the purposes of Schedule 1 to the Public Contract Regulations 2006. This means that it is not essential to follow the OJEU processes, although in the interests of good practice they will be shadowed.

7. PERSONNEL IMPLICATIONS

- 7.1 If Members agree the recommendation to market test, staff and their representatives will be engaged and consulted as early as practical at each stage of the process going forward, subject of course to any commercially sensitive information. The potential implications of this proposal were communicated to staff via an early warning letter on October 15th. There will also be engagement with service users and representatives who might be affected by the proposals.
- 7.2 Any subsequent tendering process will consider whether or not the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) would apply and the consequential legal and financial implications arising from this. Any staffing implications such as redundancies or the TUPE related transfer of staff, arising from the recommendations in this report will need to be carefully planned for and managed in accordance with Council policies and procedures and with due regard for the existing framework of employment law. Additional HR support will also be considered to minimise the impact on affected staff.

Non-Applicable Sections:	[List non-applicable sections here]
Background Documents: (Access via Contact Officer)	[Title of document and date] (Appendices to be Included) (Version 1.3July09)