

**Decision Maker:** **EXECUTIVE**  
**For Pre-Decision Scrutiny by the Children, Education and Families PDS Committee on 17 November 2022**

**Date:** **30 November 2022**

**Decision Type:** Non-Urgent                      Executive                      Non-Key

**Title:** **MAINTAINED NURSERIES TRANSFORMATION**

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**Chief Officer:** Director of Education

**Ward:** All Wards

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1. Reason for decision/report and options

- 1.1 Identifying efficiencies within service areas was one of the agreed targets under the Transforming Bromley Agenda. This report explores the options for consideration by senior officers with regards to the Council's directly delivered nursery provision.
- 1.2 The report goes on to make recommendations for the next steps for both nursery settings, which if approved will be presented to elected members for consideration.
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2. **RECOMMENDATION(S)**

- 2.1 **The Children, Education and Families PDS Committee** is requested to provide its views on the proposal that management seek to outsource the provision of early years education and childcare at Community Vision Nursery. This would be subject to soft market testing and a full staff and public consultation, the findings of which would be subject to further scrutiny by the Children, Education and Families PDS Committee prior to a Portfolio Holder decision being made whether or not to proceed to the open market.
- 2.2 **The Executive** is asked to :
- 1) Subject to comments received from the CEF PDS Committee, agree to proceed to formal staff and public consultation on a proposal to close the Council nursery located in Blenheim Children and Family Centre. The proposal would include that the service is decommissioned from 31 March 2023 and that staff currently employed to work at Blenheim Nursery are permanently relocated to the Council nursery at Community Vision, Penge; and,
  - 2) Delegate authority to implement any proposed closure to the Director of Education in consultation with the Portfolio Holder for Children, Education and Families, having considered the outcome of the consultation period.

## Impact on Vulnerable Adults and Children

1. Summary of Impact: There is a limited demand for childcare in the vicinity of Blenheim nursery and alternative childcare provision was found for all children displaced as a result of the temporary closure in July 2022. It is anticipated that the recommendation for Community Vision Nursery will support vulnerable children and families by seeking to secure sustainable delivery of provision on the north of the borough.
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## Transformation Policy

1. Policy Status: Existing Policy, Childcare Act 2006
  2. Making Bromley Even Better Priority
    - (1) For children and young People to grow up, thrive and have the best life chances in families who flourish and are happy to call Bromley home.
    - (5) To manage our resources well, providing value for money, and efficient and effective services for Bromley's residents.
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## Financial

1. Cost of proposal: Estimated Cost to be confirmed
  2. Ongoing costs: Recurring Cost Non-Recurring Cost Not Applicable: Further Details
  3. Budget head/performance centre: Blenheim R15201, Community Vision R15202
  4. Total current budget for this head: £
  5. Source of funding: RSG and nursery fee income
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## Personnel

1. Number of staff (current and additional): Current staff 17 permanent, 6 bank staff
  2. If from existing staff resources, number of staff hours:16.75 permanent FTEs
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## Legal

1. Legal Requirement: Early Years Provision is a statutory requirement under the Child Care Act 2006 and the Child Care Act 2016. There is also statutory guidance in place such as the Early Education and Child Care Guidance (June 18). The key provisions to be aware of in this matter are Section 6 of the Child Care Act 2006, (which places a duty on English local authorities to secure sufficient childcare for working parents) and Section 7 of the 2006 Act (as substituted by section 1 of the Education Act 2011), which places a duty on English local authorities to secure early years provision free of charge. Regulations made under s7 set out the type and amount of free provision and the children who benefit from free provision. These duties must be met by the Local Authority's Early Years Provisions Arrangements. More detail in section below. It should also be noted that sections 1-5 of the Child Care Act 2006, require local authorities to improve the outcomes of all children under 5 and reduce inequalities. Statutory Requirement supplemented by Guidance
  2. Call-in: Applicable: Executive decision.
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## Procurement

1. Summary of Procurement Implications:
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## Property

1. Summary of Property Implications: N/A
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## Carbon Reduction and Social Value

1. Summary of Carbon Reduction/Sustainability Implications:
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## Customer Impact

1. Estimated number of users or customers: Registered places available per day – 33 at Blenheim and 55 at Community Vision. Current users – 0 children currently attending at Blenheim Nursery and 52 children currently attend Community Vision Nursery
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## Ward Councillor Views

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

### 3. BACKGROUND

- 3.1 The Local Authority (LA) directly runs two day nurseries; Blenheim Nursery located in the Blenheim Children and Family Centre in Orpington, and Community Vision which operates from the Community Vision Children and Family Centre in Penge. The two nurseries are designated to provide full day care for children aged 0-5 and are open for 51 weeks of the year. Blenheim Nursery is currently temporarily closed due to lack of available staff.
- 3.2 Places are largely funded through a combination of the Free Education Entitlement (FEE) for eligible 2, 3 and 4-year-olds and fees paid direct by parents. A small number of places are funded by Children's Social Care (CSC) for children in need and occasionally places are purchased through college bursary funds where a parent is attending further/adult education and training.
- 3.3 Both nurseries, situated within the Education Division, share premises and site running costs with the two children and family centres that form part of the Early Intervention and Family Support Division.
- 3.4 There is no statutory requirement upon LA's to directly deliver childcare provision. There is a duty to ensure sufficient childcare for working parents (Section 8, Childcare Act 2006), but specifically the Act states that the local authority may not provide childcare unless satisfied '*that no other person is willing provide childcare*' or that '*in the circumstances it is considered appropriate for the local authority to provide childcare*'. This clause does not apply for children in need who are covered by the Children Act 1989 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 necessarily mean directly as the provider.
- 3.5 The nurseries have been subject to review on previous occasions, the most recent was in April 2017, when the Education Commissioner provided a report to the Commissioning Board.
- 3.6 The report highlighted that both nurseries were operating with a significant deficit budget following the move from an annual block grant from Children's Social Care for the purchase of guaranteed places for children in need to a pay per child placement model. This reduced the income for both nurseries significantly.
- 3.7 The 2017 report identified decommissioning of the nurseries to have the lowest financial risk at that time and the Commissioning Board and the Director of ECHS supported the recommendation at that time.
- 3.8 A staff and public consultation was undertaken in summer 2017. Three possible outcomes were given:
- Continued delivery of the service by the LA but increase fees to cover all costs.
  - Market test to identify alternative providers of the service.
  - Decommissioning of both nurseries.
- 3.9 As a result of the consultation feedback, it was agreed that the best course of action at that time was for the nurseries to remain as a Council service but move towards operating along the lines of a commercial nursery, better enabling all direct costs to be covered by the income generated.
- 3.10 Following a full staff consultation, the new operational structure came into effect in September 2018. The nurseries completed their first full financial year under the new structure in March 2020.

- 3.11 Due to the COVID-19 pandemic, the UK went into a national lockdown with effect from 26 March 2020. Although the nurseries remained operational, initially they were only open to vulnerable children and children of essential key workers. This had an impact on the income at both settings. Once some restrictions were lifted in June 2020, and early years settings were legally allowed to welcome all children back into settings, many parents continued to care for their young children at home, especially those furloughed or working from home. This continued to have an impact on the income generated, especially through private fees.
- 3.12 Over the last twelve-month period both nursery settings have struggled to recruit to vacant nursery practitioner posts. Feedback gathered at national and regional events indicate that this is a widespread national issue that has emerged post-COVID and is not limited to southeast London and Kent.
- 3.13 Whilst both Blenheim and Community Vision nurseries share some staff and currently face similar challenges, the environmental and locational circumstances place them in very different operational positions. This report considers each setting individually before proceeding to set out the options.

## **4 BLENHEIM NURSERY**

### **4.1 Operational Background**

- 4.1.1 Blenheim Nursery operates from rooms within the Children and Family Centre on the Blenheim Primary school site. The Nursery was first registered with Ofsted in September 2008 and was last inspected on the 04/08/17 with a Good outcome. This nursery sits in the heart of the Ramsden Estate in Orpington, where a high proportion of households accessing the setting are not in work. The setting has continued to see a low demand for year-round childcare, with local families indicating a preference for term time childcare options.
- 4.1.2 Blenheim nursery has two rooms, one for babies and young children aged 0 – 2 years of age, the other accommodates children aged 2 – 5 years old (pre-school room). The nursery is registered for 33 children: 9 in the baby room and 24 in the pre-school room.
- 4.1.3 The service recently sought capital funds to improve the nursery environment. The proposal included the opening up of the baby room to increase the number of places on offer, and some redecoration and updating to make the environment more inviting for children. If funding is approved, the works could help make the setting more attractive to other providers and improve the likelihood of outsourcing the nursery provision at a future date, in line with the Council's Transformation plan.
- 4.1.4 During the academic year 2021/2022 occupancy levels have been as follows:
- Autumn term – Sept 21 43% increasing to 49% by December 21
  - Spring term – Jan 22 52% increasing to 63% by March 22
  - Summer term – 65% all term.
- 4.1.5 The above figures relate to the weeks during school term time only. During the holidays occupancy rates fall considerably down to 16% up to a maximum of 33% in the summer term, which is always the busiest term in a nursery year.
- 4.1.6 Within the 2021/22 academic year cohort, there was a high proportion of children from workless households seeking to access their free educational entitlements only. Many of the children in Blenheim Nursery accessing Universal funding bring in their own packed lunch rather pay the charge for food and other consumables.

- 4.1.7 An occupancy review completed in May 2022 of the 47 children on roll highlighted the trend that many parents accessing this setting tend to seek term time funded only places.
- 4.1.8 The review identified the following pattern of attendance and fee/funding status:
- **Baby room:** 6 children on roll, all privately funded. One child was full time all year, and the other five were all part time, year-round attendees.
  - **Pre-school room:** 41 children on roll. Thirteen were two-year-olds, two of which were fee paying, eight children were funded only, and three were part funded and part fee paying. Only three of these children were full time, all year. Three more were part time all year, and the remaining seven were part time term time only. A further twenty-eight children were aged three years and over. Four of these children were part time all year, and the remaining twenty-four children were term time only, the majority of which were funded only.
- 4.1.9 Parental reaction to the short-term closure was minimal, and all parents seeking help to find alternative childcare were supported by the Early Years Team.
- 4.1.10 Of the children that were due to return to Blenheim in September 2022, three of them were given places in Community Vision, and other children have been supported to find alternative childcare within the area. The longer that Blenheim Nursery remains closed, the greater the challenge will be to recruit new children to the nursery, which will in turn impact on the ongoing sustainability of the setting.

## 4.2 Staffing

- 4.2.1 In June 2022 the decision was taken to temporarily close Blenheim Nursery at the end of the summer term on 15 July 2022. This was as a direct consequence of staffing shortages rendering the service unable to operate safely and within legal requirements.
- 4.2.2 Table 1 below sets out the current staffing levels, including vacancies.

**Table 1**

| <b>Post title</b>                 | <b>FTE</b>                               | <b>No of Vacancies / comment</b>  |
|-----------------------------------|--|-----------------------------------|
| Nursery Manager                   | 0.4 (remainder of post shared with CV)   | Postholder on 12-month secondment |
| Deputy Nursery Manager            | 1 FTE                                    |                                   |
| Senior Practitioners              | 2 FTE                                    | 1                                 |
| Nursery Practitioners Qualified   | 5 x FTE/TTO                              | 3<br>Plus 1 on maternity leave    |
| Nursery Practitioners Unqualified | 1 x 20 hr/TTO<br>1 x 10.5 hr/TTO         | 1                                 |
| Nursery Administrator             | 0.4 (remainder of post shared with CV)   |                                   |
| Kitchen Assistant                 | 0.7                                      |                                   |
| Bank Staff                        | Two bank staff with limited availability |                                   |

- 4.2.3 At the time of implementing the temporary closure, the setting was carrying two term-time practitioner vacancies. In addition, one practitioner was on maternity leave, one on long term sick and two term time staff retiring at the end of the academic year. The nursery manager was working full time at Community Vision due to the staffing shortages at that setting.

Therefore, there were only two qualified staff members available to cover Blenheim nursery over the summer period. Had the setting remained open it would have been operating illegally which could have potentially put the safety of the remaining children at risk if not addressed.

- 4.2.4 The remaining staff from Blenheim were temporarily relocated to Community Vision and were joined by Blenheim's term time only staff in September.
- 4.2.5 At the time of the announcement, nursery staff and members of the early years team proactively engaged with families, assisting in the identification of suitable alternative places. All families accessing the setting, along with those holding a future booking, were also issued printed information of alternative providers with vacancies, located in the BR5 and BR6 postcodes and identifying those with similar fee policies. In addition, parents were offered a place at Community Vision. This resulted in 3 children moving across with the staff. One family raised their concerns with their local elected Member, however following additional support from an Early Years Quality Officer the family was placed in the setting of their first choice.
- 4.2.6 Following the decision to temporarily close Blenheim, some staff have sought employment elsewhere. One term time Nursery Practitioner left their post on 31 August and one of the Senior Practitioners vacated their post in late September. Given the current early years labour force shortages, staff seeking alternative employment have typically been able to quickly gain employment elsewhere.
- 4.2.7 The current Nursery Manager who oversees both Nurseries is on a 12-month secondment within the Early Intervention Team. The Community Vision Deputy Manager is currently acting up to cover the management responsibilities for Community Vision, with the Deputy from Blenheim undertaking the supportive deputy duties.
- 4.2.8 The restructure in 2017 saw a change to the management structure, with one nursery manager managing both nurseries. In practice, this has presented challenges to Blenheim Nursery in particular, as the manager has frequently been required to work in child ratio at Community Vision. Blenheim has suffered without a full-time manager on site leading practice and managing staff. Should the decision be taken to reopen Blenheim, then officers may wish to review the current management structure.
- 4.2.9 Recruitment adverts have been regularly placed on the Bromley Council jobs website since July 2021 with very limited success. Adverts were also placed on Linked-in, in Nursery World, and Jobs go Public, all without success.
- 4.2.10 Only one new member of staff was successfully recruited. However, after her second day in post she asked to be released from her contract, citing the travel to Community Vision too difficult, especially with there being no fixed arrangements in place to re-open the setting at Blenheim.
- 4.2.11 In line with HR processes, management have attempted to recruit via Matrix without success. Attempts to recruit to a maternity cover post also failed and there is no return date yet for the member of staff on maternity leave.
- 4.2.12 The recent trend in Blenheim has been to recruit to term time posts, due to the greatest demand for places weighted towards term time only.

### **4.3 Local sufficiency**

- 4.3.1 Blenheim Nursery is not well served by public transport. It is within walking distance of one bus stop, but a considerable distance from the main line train station. Therefore, the site is not well situated for working families who commute to London or Kent.
- 4.3.2 The review of sufficiency in 2021 highlighted that within the BR6 postcode and the Orpington ward there were four preschools, two-day nurseries and twenty childminders providing 292 childcare places for around 962 children aged 0-4 years. This indicated a childcare ratio of 0.30, making it an area of priority within sufficiency planning. One year on and two pre-schools have closed due to low occupancy, and more recently a new day nursery has been registered in the ward, closer to the town centre.
- 4.3.3 With the recent changes to the ward boundaries, there is now one day nursery (Blenheim) two pre-schools and nine childminders following the reduction in size of the Orpington ward. There is one provider that is currently registering a new day nursery, closer to the town centre, where there may be a greater demand for year-round childcare.

#### **4.4 Options for consideration**

##### **Option one – Continue attempts to recruit new staff to support re-opening as a day nursery**

- 4.4.1 This option is not recommended by officers. Under this option the nursery would remain closed until such a time that there are sufficient staffing levels to fully open both rooms to children. There is no indication that the difficulties in recruiting sufficiently qualified staff to provide the service will be resolved within a reasonable time frame. Re-establishing a financially viable cohort will take some time and the service will continue to operate in a deficit position whilst attempts are made to attract new families. This level of uncertainty is very unsettling for the existing staff.
- 4.4.2 In order to re-open the setting the service is required to adequately staff the provision from 8:00 am – 6:00 pm for 51 weeks of the year. Given the recent difficulties with staff recruitment it is unrealistic at this stage to predict a re-opening date.
- 4.4.3 There are only two full year qualified staff remaining on the staff list for Blenheim Nursery, one of whom is the Deputy Manager. Whilst the Nursery Manager is on secondment, the Deputy will be required to act up as Manager should the setting be re-opened. The remaining full year member of staff is a senior practitioner who is currently undertaking a phased return to work on light duties and unable to count in ratios.
- 4.4.4 There are 2 qualified term time staff in post, one of whom is on maternity leave and her likely return date is not yet known. There is also one part time unqualified practitioner in post.
- 4.4.5 On order to re-open the setting as a full day nursery the setting will need to recruit at least an additional 4 qualified staff, assuming the member of the team on Maternity leave returns, and the senior practitioner returns to full duties. Based on recent attempts to recruit qualified staff, this seems unachievable in the near future.
- 4.4.6 The main disadvantage to this option is that the longer the nursery is closed, the more difficult it will be to get previous users to return, and the setting will need to build up a new user base from zero which will take time.

##### **Option two; Re-open the setting under a term time pre-school model**

- 4.4.7 This option is not recommended at this time. There are currently insufficient staff in post and able work in ratio to safely open the setting under a pre-school model. If this is attempted, it



will once again place the setting at high risk of service disruption due to short notice closures during periods of staff sickness and other unplanned emergencies.

- 4.4.8 The occupancy review has demonstrated that the local demand is heavily weighted towards term time only provision. If the option to open from 9am – 4pm, term time only was implemented, parents could access a three-hour session either morning or afternoon, with an optional lunch club open for those parents who opt to pay for all day provision. Under this model, the current baby room would be changed into two-year-old room operating alongside a larger three- to four-year-old room.
- 4.4.9 Under a pre-school model the setting would no longer be required to provide a cooked meal at lunchtime. Parents requiring the option of the lunch club would pay for the additional hour of attendance and provide a packed lunch for their child.
- 4.4.10 Staff would work their 36-hour week on the same shift each day, term time only. Having half an hour for lunch, would leave them some set up and tidy up time each day. Existing staff on all year-round contracts could work at Community Vision during the weeks that Blenheim is closed to children.
- 4.4.11 As a pre-school, Blenheim would require lower staffing levels overall compared to operating as a full day nursery. However, it is recommended that management considers the creation of a full-time term time manager on site rather than continue to share a manager with Community Vision. Savings could be realised elsewhere by requiring the Deputy Manager to work in ratio, supervising the older age room, with the remaining senior practitioner in the two-year-old room.
- 4.4.12 The existing Kitchen Assistant, who currently holds a second part time post as an unqualified practitioner within the setting, could be given the option of a full-time practitioner post. There are two other term time staff already employed, one of whom is on maternity leave. Upon her return and the engagement of a new Pre-School Manager, this could provide sufficient staff to re-open one room, whilst providing additional time to employ additional term time staff for the second room. However, at this point in time there is no fixed return date for the member of staff on maternity leave and there is a reasonable risk in the current employment climate that the Pre-School Manager post would remain vacant.

### **Option three: Decommission the service at Blenheim Nursery**

- 4.4.13 This option is recommended. Attempts to recruit to vacant nursery practitioner posts have met with very limited success for over a year. This has resulted in the Council running 2 settings, neither of which are sufficiently staffed to provide an efficient and cost neutral service. The relocation of the staff at Blenheim to the nursery at Community Vision will help to address some of the staffing shortages at that setting. This will allow staff to work effectively and efficiently and provide a consistent and reliable service for parents accessing the setting.
- 4.4.14 The LA has a statutory duty to ensure sufficient childcare for working parents (Childcare Act 2006). This is mainly met through supporting private and voluntary sector childcare providers operating within the borough.
- 4.4.14 Permanent closure of Blenheim nursery would reduce the number of full nursery places available in the Orpington Ward, which may have a negative impact on overall sufficiency of full day places in this area. However, as indicated by the Blenheim nursery occupancy review, the recent local demand is directed more towards part time provision rather than for year-round childcare.

- 4.4.15 Under this option, the existing staff would be consulted with on a permanent change to their work base moving from Blenheim Nursery to Community Vision Nursery. This would be a potential redundancy situation, however, as Community Vision Nursery is also carrying some vacant posts, there are sufficient suitable alternative roles to offer to staff who are displaced due to the closure of Blenheim Nursery. A public consultation would take place in parallel with the staff consultation.
- 4.4.16 The closure of Blenheim and relocation of staff to Community Vision would help to strengthen the offer at that setting and allow for more children to start in the Nursery. There is the option to open the second baby room, if the service are able to fill the current vacant posts there, but recent recruitment attempts have been unsuccessful. However, moving the remaining Blenheim staff over to Community Vision on a permanent basis will potentially fill posts that have been vacant for over one year and help to make Community Vision more financially viable in the long term.
- 4.4.17 As the setting shares the site running costs with the Children and Family Centre, this will have implications for that service who will then be liable for all costs. Adjustments to the relevant budgets will be made in order to make this cost neutral. This will have an impact on any potential savings being made.
- 4.4.18 The vacated space could be taken back by the Children and Family Centre for alternative use, or the space could be commissioned out to a new provider of childcare after a period of closure of at least one term in duration. TUPE transfer rights may not apply for the existing Council staff.

## **4. COMMUNITY VISION NURSERY**

### **5.1 Operational Background**

- 5.1.1 Community Vision Nursery is part of the Community Vision Children's Centre, which is situated on the Groves estate in Penge. The Nursery was first registered with Ofsted in March 2006. The most recent Ofsted inspection took place on February 9th 2018, with a Good outcome.
- 5.1.2 The nursery is registered for 55 children and has 4 rooms: 2 baby rooms, a toddler room, and a pre-school room. One of the baby rooms has been closed for some time, initially due to low demand, and now due to the difficulties the setting has had with recruiting staff. As a result, the current operating capacity is 49 children across the three rooms.
- 5.1.3 Potential refurbishment work has been identified which could improve Community Vision Nursery. These options include the removal of an internal wall between the two baby rooms, opening it to one larger and more manageable space. The service is also seeking to develop the toddler and baby garden areas, along with some internal redecoration.
- 5.1.4 Also under consideration is an option to create a stand-alone entrance to the nursery, which might make the nursery more of an attractive option if the Council were to seek to commission out this service to an external childcare provider at some future point.
- 5.1.5 A recent review of the overall occupancy levels within Community Vision identified the following:
- Autumn term 2021 – Sept 21 47% - Dec 21 47%
  - Spring term – Jan 22 62% - March 22 64%
  - Summer term – April 22 69% - July 22 64%

- 5.1.6 Compared to Blenheim Nursery, a higher proportion of children attend Community Vision on an all-year-round basis, with a higher proportion of private fee-paying families accessing the service. There are four children who currently attend in the afternoon 1-4pm slot, offered to families unable to afford the consumables charges.
- 5.1.7 Attendance during the school holiday weeks ranges from 20% to 38% occupancy.
- 5.1.8 The review of occupancy was based on the maximum occupancy of 55 places per day, however one room is currently closed due to staffing. Community Vision has three full time vacancies that the service has been attempting to recruit to since December 21. There are also other vacant posts within the establishment that officers have not yet tried to recruit to.

## 5.2 Staffing

- 5.2.1 Table 2 below provides a summary of the current staffing levels and vacant posts (excluding staff temporarily relocated from Blenheim Nursery).

**Table 2**

| <b>Post title</b>                 | <b>FTE</b>                                    | <b>No of Vacancies / comments</b> |
|-----------------------------------|---|-----------------------------------|
| Nursery Manager                   | 0.6 (remainder of post shared with Blenheim)  | Post holder on secondment         |
| Deputy Nursery Manager            | 1 FTE   | Acting up as Manager              |
| Senior Practitioners              | 3 FTE   |                                   |
| Nursery Practitioners Qualified   | 5 FTE<br>4 FTE/TTO<br>1 0.2FTE                | 3<br>2                            |
| Nursery Practitioners Unqualified | 1 FTE   |                                   |
| Nursery Administrator             | 0.6 (remainder of post shared with Blenheim)  |                                   |
| Kitchen Assistant                 | 0.56 FTE                                      |                                   |
| Bank Staff                        | Four Bank staff members, limited availability |                                   |

- 5.2.2 Community Vision Nursery continues to attract private paying parents seeking childcare due to their work commitments. Each year, the numbers of children attending on a year-round basis continues to increase.
- 5.2.3 Since the temporary closure of Blenheim Nursery, its staff have been temporarily redeployed to work at Community Vision Nursery. This has increased the staffing levels at CV by one full-time year-round staff, one part time year-round staff member, and a term time only staff member.
- 5.2.4 There is an option at CV to increase occupancy levels by opening the second baby room. This would increase the availability of places for children under two years of age and help strengthen the financial viability of the nursery.
- 5.2.5 Although the temporary move of staff is positive for Community Vision and has helped ease staffing pressures, this is a short-term arrangement. Therefore, it is not possible to increase

occupancy levels until a decision is made about Blenheim Nursery, and a staff consultation completed if there are any changes proposed.

5.2.6 Recruitment of staff remains an issue at Community Vision Nursery as well as at Blenheim, with three full time vacancies dating back to the autumn term 2021. This recruitment difficulty means that staff are cautious with regards to the number of children offered places, and they are not always able to accommodate all requests with the current staffing levels.

### **5.3 Local sufficiency**

5.3.1 Community Vision Nursery is in the heart of the Groves estate in Penge. There are four main line train stations within reasonable distance, and local bus links are good for parents needing to commute to work.

5.3.2 The review of sufficiency in 2021 highlighted that within the SE20 postcode and the Penge and Cator ward that there were ten preschools, seven day nurseries and twenty-two childminders, providing 730 childcare places for around 1,338 children aged 0-4 years. With a childcare ratio of 0.55 it was identified as an area without any sufficiency concerns. Following the recent the ward boundary changes there is one additional pre-school and five fewer childminders in this ward.

### **5.4 Options**

#### **Option 1: Continue to operate under current model as a direct provider**

5.4.1 This option is not recommended. 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*'. At this stage the Council has not tested the position to establish if another provider is willing to deliver this service in its place. In addition, during a time of increasing cost pressures on the Council, outsourcing this service (see Option two below) could help reduce the financial risk.

5.4.2 As the largest of the two nurseries, Community Vision has the most potential to become fully self-financing. The setting continues to attract a higher percentage of full fee-paying parents than Blenheim Nursery.

5.4.3 The identification of capital funding would enable the opening up of the two small baby rooms into one larger space, which will be more cost effective to staff according to the ratios required for under 2-year-olds. Currently one baby room can accommodate nine babies and the other six, this is a challenge to manage as two separate rooms, with one open space it would be easier to staff, with a maximum of five staff at any one time. For example, as children depart during the afternoon, staffing levels can reduce across one room rather than two rooms. As separate rooms, there is a requirement to always have at least two staff.

5.4.4 The setting is located in area with a high demand for childcare and is conveniently located for ease of access to transport networks.

5.4.5 As stated in paragraph 1.4, there is no statutory requirement upon LA's to directly deliver childcare provision. Managerial oversight of the nurseries takes up a considerable amount of officer time and resource, which could be directed towards other duties and responsibilities if the Council ceased to be a direct provider.

#### **Option 2: Market test with a view to outsourcing the service**

- 5.4.6 This is the recommended option. Firstly, it meets the requirements of the Childcare Act in establishing whether there are alternative persons or organisations that are willing to provide the provision that there is an established demand for. This option could also enable the Council to achieve full cost recovery through a managed service following a tender process and reduce the current financial risk.
- 5.4.7 The local market of private, voluntary and independent (PVI) providers in Bromley is well developed, of a good standard and includes some large nursery chains. Whilst a total of six settings in Bromley closed during the 2021/2022 academic year, two have re-opened under new management indicating that there is local appetite amongst the PVI sector to open and expand the market when conditions are right.
- 5.4.8 Given that the provision at Community Vision is well established and that the numbers of fee-paying families using the nursery are on the increase, it is feasible that alternative providers may view the nursery as an attractive business prospect. Therefore, the Council may wish to consider market testing to determine the level of interest amongst private providers to take over the management of this setting.
- 5.4.9 If the option to market test is agreed a full staff and public consultation would need to be undertaken. Staff and their representatives will need to be engaged and consulted as early as practicable at each stage of the process. Any subsequent tendering process will need to consider how TUPE would apply and the consequential legal and financial implications arising from this.
- 5.4.10 There are two models of out-sourcing:
- i) Via a contract for service (management contract).  
By entering into a contract for service with an external provider, the LA remains as the direct provider of the service, but via a third party. This would be based on a contractual price, with additional third-party overheads, for the delivery of the service. This option may appeal to voluntary sector organisations as it carries the least risk for the provider. Accommodating the management fee will increase the nursery operating costs for the Council in the short term, but different models for the tender in terms of incentivising the maximisation of the income could be explored.
  - ii) Via a concession contract.
    - a. 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. This arrangement is most likely to appeal to private providers, including existing nursery chains.
    - b. In entering a concession agreement, the Council will be inviting providers to submit a price for awarding the concession to the third party. Arrangements for use of the premises would need to be finalised, including rental charges. This could be provided under a licence to occupy which would specify the areas within the property involved, access arrangements, hours available and responsibilities of the Council and the third party.
    - c. In transferring the operation of the service via a management contract or concession agreement, TUPE will apply to staff currently employed by the Council in the delivery of the service. In the event of the transfer of staff, the Council would also transfer the associated liabilities and risks, including pension arrangements.
    - d. This is likely to be a key area of concern for any incoming service provider. Local authority pension liability and the terms of employment are a potential barrier for other early years providers. For example, in order to ensure financial viability, the business model of private day nurseries tend to require a full-time member of staff to work for 40 hours per week, not 36.

### **Option 3: Decommission the nursery at Community Vision**

- 5.4.12 This option is not recommended at this stage. Officers are not convinced that there would be sufficient capacity within the north of the borough if this setting were to be decommissioned.
- 5.4.13 Although the Penge and Cator ward is reasonably well served with other early years providers, demand for places is generally high and the nursery is often oversubscribed. The 2021 Sufficiency review highlighted that an additional 121 new homes were planned for the area which is likely to add an increased level of demand for early years places locally.
- 5.4.14 Local response to a public consultation in autumn 2017 indicated that there was strong support for the nursery at Community Vision to remain. The setting clearly meets the needs of the local community and the demand for places remains strong. It is therefore reasonable to assume there would be a similar public response to that in 2017. In addition, closure of this setting would risk the Council facing sufficiency challenges within the Penge and Cator ward.
- 5.4.15 As with Blenheim, the setting shares the site running costs with the adjoining Children and Family Centre and decommissioning the nursery will have implications for that service, who will then be liable for all costs. Adjustments to the relevant budgets would need to be made in order to make this cost neutral. This will have an impact on any potential savings.

## **6. IMPACT ON VULNERABLE ADULTS AND CHILDREN**

- 6.1 An equality impact assessment was completed as part of the nursery review process. No impact was identified on any of the protected characteristics. This position will be kept under review pending findings from the consultation processes.
- 6.2 Placements sought for vulnerable children supported by Children's Social Care are reviewed at the Section 18 Funding Panel which is attended by the Early Years Strategy Manager. This ensures the panel has access to up to date information regarding suitable settings for the placement of vulnerable children in settings within the PVI sector.

## **7. TRANSFORMATION/POLICY IMPLICATIONS**

- 7.1 Transforming Bromley Our Four-Year Roadmap (2019-2023), Responsible financial management strategy. This report seeks to prioritise the limited resources available to the Council for the direct delivery of childcare to the area of highest demand alongside realising small budgetary efficiencies to mitigate rising expenditure elsewhere.
- 7.2 In addition, the outsourcing of the service at Community Vision would help future proof the provision, ensuring continuity of service for residents.
- 7.3 Making Bromley Even Better (2021-2031): Bromley has five ambitions for the next stage of our journey. The relevant ones to this service are:
- For children and young people to grow up, thrive and have the best life chances in families who flourish and are happy to call Bromley home.
  - To manage our resources well, providing value for money, and efficient and effective services for Bromley's residents.

## **8. FINANCIAL IMPLICATIONS**

- 8.1 The financial considerations are twofold. The proposal for the closure of Blenheim will realise a saving from 2023/24 of £68k per annum. Table 3 below outlines the position:-

**Table 3**

| <b>Blenheim Nursery</b>                      |              |
|--|--------------|
|  | <b>£'000</b> |
| Net Controllable budget                      | 98           |
| Less Business Rates and and other sunk costs | -30          |
| Potential saving from 2023/24                | <b>68</b>    |

- 8.2 Although there are savings on the budget they are reduced due to sunk costs such as business rates, utility costs, that will remain with the Children's Centre to continue to have to pay as they will occupy the remainder of the building.
- 8.3 For the Community Vision (CV) setting the recommended proposal is to set the service up to be soft market tested to commission out the service.
- 8.4 Savings for the closure of CV would be £28k per annum. This would be due to sunk costs such as business rates, utility costs, that will remain with the Children's Centre to continue to have to pay as they will occupy the remainder of the building.
- 8.5 Although soft market testing has not yet been carried out it is reasonable to assume that, if another provider comes in to run the service, that the sunk costs mentioned above would be paid for any provider or separate arrangements be made. If this was the case the savings generated would be in the region of £65k. Details of the CV proposals are outlined in Table 4 below:-

**Table 4**

| <b>Community Vision - closure</b>                  |              |
|--|--------------|
|  | <b>£'000</b> |
| Net Controllable budget                            | 65           |
| Less Business Rates and and other sunk costs       | -36          |
| Potential saving from 2023/24                      | <b>29</b>    |
| <b>Community Vision - commissioned</b>             |              |
|  | <b>£'000</b> |
| Net Controllable budget                            | 65           |
| Less Business Rates and and other sunk costs       | -36          |
| Cost transferred to provider/separate arrangements | 36           |
| Potential saving from 2023/24                      | <b>65</b>    |

- 8.6 The CV commissioning proposal is dependent on some capital works being carried out to make the area more fit for purpose. These costs have not yet been quantified and may have an impact on the decision. Further work is being carried out by Officers to ascertain a figure for this. Any costs would have to be funded from the Capital Programme and would need an allocation agreed by Members before it could proceed.
- 8.7 It is envisaged that both proposals will not result in any redundancies and therefore no costs in this area as staff have been relocated to the CV site already whilst Blenheim has been temporarily closed.

## **9 PERSONNEL IMPLICATIONS**

- 9.1 There are currently 16.75 FTE permanent employees employed in the nursery teams. Any staffing implications arising from the recommendations outlined 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 legislation. In the event that Members agree to the recommendations set out in this report, this would necessitate formal consultation with existing staff and their staff representatives.

9.2 Staff are being informally consulted on the proposal on the 10 November 2022, in line with HR advice. Feedback from this consultation will be provided in a verbal update to the committee meeting on 17 November 2022.

## 10. LEGAL IMPLICATIONS

10.1 The first two Recommendations to this report are seeking approval from the Executive to:

- I. proceed to formal staff and public consultation on a proposal to close the Council nursery located in Blenheim Children and Family Centre;
- II. delegate authority to implement the proposed closure to the Director of Education in consultation with the Portfolio Holder for Children, Education and Families, having considered the outcome of the consultation period.

10.2 In addition this report is making a third Recommendation to the Children, Education and Families PDS Committee to provide its views on the proposal that management seek to outsource the provision of early years education and childcare at Community Vision Nursery. This would be subject to soft market testing and a full staff and public consultation, the findings of which would be subject to further scrutiny by the Children, Education and Families PDS Committee prior to a Portfolio Holder decision being made whether or not to proceed to the open market

10.3 There is no statutory duty on the Council to provide these specific services but, in support of its childcare functions, the Council has an implied legal power to provide /secure the provision of these childcare services.

10.4 Whatever arrangements are made to deliver Early Years provision, the Local Authority must ensure that it meets its statutory duties. These are, inter-alia,

- I. in respect of the Child Care Act 2006, the requirement under s6 to secure sufficient childcare for working parents. Section 7 places a duty on local authorities in accordance with regulations to secure free early years provision of the prescribed description for each young child in their area who is under compulsory school age and is of the prescribed description.
- II. The Child Care Act 2016, Section 1 places a duty on the Secretary of State (which the SofS can discharge by placing a duty on Local Authorities ) to secure childcare free of charge for qualifying children of working parents for, or for a period equivalent to, 30 hours over 38 weeks of the year. Section 1(2) and regulations made under Section 1(2) define a qualifying child
- III. The statutory guidance Early Education and Child Care dated June 2018, helpfully sets out eligibility for various groups of children and adults. [Early education and childcare \(publishing.service.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/721107/early-education-and-childcare-2018.pdf)
- IV. Other important provisions are sections 12 and 13 of the Child Care Act 2006 which respectively provide duties on Local Authorities that they are: to provide information, advice, and assistance to parents about childcare in the area, and that they are to secure



the provision of information, advice and training to childcare providers and childcare workers.

- V. Any deliverer of Early Years provision will need to follow the guidance of March 21 regarding standards of learning, development, and care for children from birth to five. [Statutory framework for the early years foundation stage \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

- 10.5 Although there is no express statutory duty to consultation, it has been recommended that staff are consulted on the closure and relocation of the Council nursery. Public authorities have a general duty to act fairly and although this does not equate with a general duty to consult, given the importance of these services, consultation has been recommended. If the Council chooses to consult, then the consultation must be adequate and fair. Paragraph 6.1 of this report sets out the current position and plan concerning both the consultation (staff and public) and the Equality Impact Assessment on the proposals as they relate to each Nursery.
- 10.6 The Council's Constitution provides a list of functions which must be exercised by the Full Executive. This includes 'the provision or closure of any Council facility', particularly but not exclusively the following: 'schools, and any other educational facility'.
- 10.7 In terms of the procurement strategy for the provision of early years education and childcare at Community Vision Nursery, as explained elsewhere in this report, officers are currently exploring two procurement routes namely through a management services contract or a management concession contract. Although each route would be categorised as either a public contract under the Public Contracts Regulations 2015 or a concession contract under the Concession Contracts Regulations 2016, it is unlikely that the procurement will need to comply with either regime although this will need to be reviewed.
- 10.8 The award of any such contract must comply with the Council's Contract Procedure Rules (CPRs) which are designed to produce a best value outcome to the Council.
- 10.9 Officers will also need to consider and factor into the procurement whether to grant occupational rights through either a lease or license as mentioned elsewhere in this report.
- 10.10 In terms of any proposed capital works these will need to be added to or procured separately to the proposed services contract in compliance with the Regulations and CPR's.
- 10.11 Elsewhere throughout this report officers have referred to and are cognisant of the important issues surrounding Human Resources and TUPE in relation to the Nurseries.
- 10.12 All Council decision-making must be made rationally in accordance with administrative law principles, by taking proper account of all relevant considerations and disregarding those that are irrelevant. Furthermore, the Council must comply with its Fiduciary duty towards taxpayers and ensure resources are used prudently.

## **11 PROCUREMENT IMPLICATIONS**

- 11.1 This report seeks approval in principle to proceed to procurement, following a soft market testing exercise, for the provision of nursery services at an estimated value of £64k.
- 11.2 Health, social and related services are covered by Schedule 3 of the Public Contracts Regulations 2015, and thus any tender would be subject to the application of the "Light Touch" regime (LTR) under those regulations. This procurement falls below the threshold where it is deemed LTR services would be likely to be of cross border interest.

11.3 This report further requests the delegation of the formal decision to proceed to procurement to the Chief Officer in consultation with the Portfolio Holder, covering the finalised details of the procurement strategy and route to be used. The Council's specific requirements for authorising proceeding to procurement are covered in 1.3 of the Contract Procedure Rules, and would normally require the formal Approval of the Portfolio Holder, followed by the Agreement of the Assistant Director Governance & Contracts, the Director of Corporate Services and the Director of Finance for a procurement of this value. In accordance with CPR 2.1.2, Officers must take all necessary professional advice.

11.4 The actions identified in this report are provided for within the Council's Contract Procedure Rules, and the proposed actions can be completed in compliance with their content.

**12 CUSTOMER IMPACT**

12.1 As previously discussed under section 4.3.2, despite the low childcare sufficiency ratio, there is a limited demand for childcare places in the vicinity of Blenheim nursery. Alternative provision was identified for those children who were displaced as a result of the temporary closure in July.

12.2 If a decision is made to decommission Blenheim nursery, the permanent relocation of staff to Community Vison nursery will enable that setting to increase the number of places offered to families within the Penge and Cator ward. The SE20 postcode is an area of high demand, and this would help meet the growing need for full day care on the north side of the borough.

|   |   |
|---|---|
| <b>Non-Applicable Headings:</b>                       | <b>PROPERTY IMPLICATIONS,<br/>CARBON REDUCTION/SOCIAL VALUE IMPLICATIONS,<br/>WARD COUNCILLOR VIEWS</b> |
| Background Documents:<br>(Access via Contact Officer) | [Title of document and date]  |