

Cabinet

12 September 2019

**Agreement for Maintained School to Become Member
of a School Company**

Recommendation

That Cabinet gives consent to the governing body of Brookhurst Primary School, Leamington to become the sole member of a new company being established to run the on-site nursery at the school's premises.

1.0 Key Issues

- 1.1 Nursery facilities on the site of Brookhurst Primary School are currently run by a private charitable company, Caterpillar Nursery (Leamington) Ltd. The trustees of this company have been unable to recruit replacements and therefore no longer consider their organisation to be sustainable.
- 1.2 The Governing Body of Brookhurst Primary School consider that it is vital, both to meet the needs of families in their local area and also to ensure the sustainability of the school, that nursery provision remains in place on the school's site, and feel that this would be best met by the Governing Body taking over responsibility for the running of the nursery. The Chair of Governors has provided a letter to this effect, which is attached as an Appendix.
- 1.3 The local authority has a statutory duty to secure sufficient early years and childcare places for all eligible children in its area, and to maintain an oversight of how it is meeting this statutory duty. There are currently 11 nurseries within 1 mile of Caterpillar Nursery, but occupancy is almost at capacity. There are currently 28 children receiving funded sessions at Caterpillar Nursery. The local authority would therefore have difficulty in meeting its statutory obligations if early years' provision at Brookhurst ceased.
- 1.4 As a charitable company, Caterpillar Nursery (Leamington) Ltd must only pass its assets to a charitable body with similar objects to its own.
- 1.5 As a community school, Brookhurst Primary School does not have charitable status, but does have the ability to establish a charitable 'School Company' which will be wholly owned by the Governing Body

but hold registered charity status and have a separate Ofsted registration.

- 1.6 School companies were established by the Education Act 2002 and their operation is governed by the School Companies Regulations 2002. A school company is not a special type of company of business; it is simply a company set up by one or more local authority maintained schools. This power is given to schools maintained by the local authority for specific activities, including exercising relevant local authority functions, including ensuring the provision of sufficient childcare to meet need within a local area.
- 1.7 The school company will be a company limited by guarantee and the Governing Body of Brookhurst Primary School has confirmed that the governing documentation of the School Company will contain the necessary provisions which are required pursuant to the School Companies Regulations 2002.
- 1.8 Under the Regulations, all School Companies are required to have a Local Authority as a supervising authority. As the maintaining authority for Brookhurst Primary School, Warwickshire County Council would be required to be designated authority for the proposed School Company.
- 1.9 The Local Authority has a number of duties as the supervising authority:
 - To notify the Secretary of State of the particulars of the company;
 - To monitor the finances and management of the company;
 - To notify the Member(s) if it considers that the company is poorly managed or at risk of becoming insolvent; and
 - To notify the Secretary of State of changes to the company's name, registered number and any change in membership.
- 1.10 The Local Authority has a number of powers related to a school company. It can direct:
 - The company to provide it with information;
 - The company to take steps to comply with the Regulations;
 - The school to reduce its involvement in the management of the company; and
 - The Governing Body to resign as a member of the company.
- 1.11 The Local Authority must direct a maintained school to either reduce its involvement in the management of the company or resign from the company if it meets any of the criteria outlines in Paragraph 2.2.

2.0 Options and Proposal

- 2.1 Under Section 12(1) of the Education Act 2002, a governing body of a

maintained school is required to obtain the permission of its Local Authority before forming or joining a school company.

2.2 Under Regulation 15 of The School Companies Regulations 2002 a Local Authority may only refuse permission for a school to become a member of a school company on the following grounds:

- The school is subject to special measures;
- The school has serious weaknesses;
- The Local Authority considers that the school is likely to become subject to special measures or be assessed as having serious weaknesses within the next year;
- The school has a deficit budget;
- The Governing Body of the school has, within the last three years, been a member of a school company which became insolvent at a time when the Governing Body was a member; or
- The Governing Body of the school has been a member of a company which failed to act in accordance with the Regulations within the last three years.

2.3 Brookhurst Primary School does not accord with any of the reasons for the Local Authority to refuse permission. It is, therefore, recommended that consent be given.

3.0 Financial Implications

3.1 Organising in this way will allow the school to access the charitable assets of the former pre-school. These resources will be used to assist with setting up the new nursery and will not be available for general school use.

3.2 The school will be required to keep all financial records for their new pre-school completely separate from the main school accounts. The nursery will be established as a separate company, and its accounts will not form part of the Local Authority's accounts.

3.3 As part of implementing the recommendation your officers will agree with the school practical arrangements as to how the local authority's responsibilities as supervising authority outlined in paragraphs 1.9 and 1.10 will be met and record them in a governance protocol.

4.0 Timescales associated with the decision and Next Steps

4.1 It is anticipated that the school will be able to establish the school company during the course of the autumn term, subject to local authority approval.

4.2 The school company will need to obtain a separate Ofsted registration in order to establish nursery provision in the former Caterpillar Nursery

building. An application to Ofsted will be submitted at the earliest possible date, as early years provision cannot operate without a valid Ofsted registration.

Background Papers

None

Appendix

Letter from Chair of Governors at Brookhurst Primary School, Leamington

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This report was circulated to the following members prior to publication.

Councillors Chattaway, Butlin, Dahmash, Morgan, Roodhouse, Chilvers, Williams, Hayfield and C.Davies



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1st, August, 2019

I write to confirm our Full Governor Board's (FGB) commitment to taking responsibility for the running of Caterpillar Nursery. In doing so we feel that we are supporting a need for such provision in our local community and ensuring the longer term sustainability of our school. We are confident that our leadership team and staff have the relevant skills to to secure the long term success of the nursery. As governors we feel we have the necessary capacity to undertake a complex transition process and to engage with and support our school and nursery teams in maintaining and developing this important community provision for young children and their families.

The School Company will be a company limited by guarantee and it is proposed that the school will become a member of the School Company. The governing documentation of the School Company will contain the necessary provisions which are required pursuant to the school company regulations 2002

We respectfully request that the Council consents to our school becoming a member of the School Company pursuant to the regulations and we look forward to hearing a response following the Cabinet Meeting of September, 12th, 2019.

Yours sincerely,

Joseph Cannon.

Chair of Governors.