



NURSERIES CONSULTATION REVIEW REPORT

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1. EXECUTIVE SUMMARY

- 1.1 This review relates to the consultation exercise carried out by North East Lincolnshire Council (**NELC** or **the Council**) on the closure of Great Coates Village Nursery (**Great Coates**), Scartho Nursery School (**Scartho**) and Reynolds Day Care (**Reynolds**).
- 1.2 On 13 June 2023 at 15:07, the Council announced on its website that it was consulting on the future of two nurseries (Scartho and Great Coates) and an early years day care setting (Reynolds). The consultation was for a 4-week period, due to close at 17:00 on 7 July 2023. In the press release, Councillor Cracknell explained:
- “As a Council, we have a responsibility to ensure that there are enough places for those eligible children. In North East Lincolnshire we are very lucky to have a number of private, voluntary and independent early years providers. We are now at a point where we have three places for every eligible two-year-old, and more than double the required places for three and four-year-olds. Parents have also changed how they choose the setting that’s right for them, with more parents opting for a nursery or early years setting closer to their workplace than their home. We’re asking residents to give their views on these proposals. To get involved, people can visit the Council’s website.”*
- 1.3 On 28 June 2023, the Council’s Cabinet agreed to extend the consultation period by 4 weeks. The closure date was moved to 4 August 2023 at 17:00. This was announced by NELC on its website on 3 July 2023 at 16:11. The press release reassured the public that their views would be listened to, but that change was necessary.
- 1.4 On 7 July 2023 at 11:51, a FAQ page was published on the NELC website. The questions included the reasons for the consultation, alternative provision, engagement with staff, the nursery finances, timelines for the consultation and change, and how the evidence for the consultation had been collected.
- 1.5 On 14 July 2023 at 15:36, it was announced on the NELC website that Cabinet had decided to end the consultation. The press release stated that the Council now intended to “...take time to work with staff, governors, and parents...” in order to “...fully assess the situation, taking account of the hundreds of views already gathered. They include positive approaches from organisations already working in local childcare, as well as parents, governors, and residents.”
- 1.6 The consultation exercise suffered from a lack of an effective and consistent plan from the start. Decisions were made which later had to be changed, and this led to the exercise being unclear and confusing for those attempting to engage with it. The exercise was heavily impacted by ineffective communication between Children’s Services and other key Council Services, the Council officers and Members, and the Council and the public. The consultation exercise took Members by surprise and came across to the public as being predetermined and largely unsubstantiated.
- 1.7 The Council needs to ensure that its decision-making processes are accessible and understandable to officers and Members. It should also facilitate effective communication and decision making where possible in the future by providing appropriate training and resources to its Members and officers.

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2. REVIEW METHODOLOGY

- 2.1 Rob Walsh, Chief Executive of the Council, instructed Wilkin Chapman to undertake a review of the nursery consultation exercise in the interests of strengthening the governance arrangements of NELC and highlighting the lessons that can be learnt.
- 2.2 Wilkin Chapman LLP is a solicitor's firm based in Lincolnshire and East Yorkshire with a national local government legal practice. Work in relation to this review was undertaken by Jonathan Goolden, Gill Thompson, Harriet Costello and Emily Briggs.
- 2.3 The terms of reference of that review set by the Council were:
- (a) To undertake a review of preliminary stages including the rationale for the overall proposal and lead in to the launch of the consultation, including Officer/Elected Member engagement;
 - (b) To undertake a review of the approach, implementation and conduct of the consultation exercise in respect of nursery provision;
 - (c) To review the effectiveness of the interface and engagement between Children's Services (Education and Inclusion) and corporate services (incl HR, legal, consultation / engagement) in respect of the design, process and conduct of the consultation;
 - (d) To review the extent to which the exercise provided for (or impeded) transparent access to accessible key data and information to enable decision makers, ward councillors and stakeholders (including TUs) and the public to fully engage in the process;
 - (e) To make such recommendations considered appropriate to assist with learning and improvement and the conduct of similar exercises in the future;
 - (f) To make such other recommendations considered appropriate arising from specific findings during the review.
- 2.4 The Personal Assistant to the Chief Executive of NELC, acting as a conduit, provided us with relevant material to assist with this review. This included:
- (a) emails involving Children's Services, People and Culture, Finance, Legal Services, and Cabinet Members;
 - (b) emails from ward councillors;
 - (c) Freedom of Information Act requests made;
 - (d) documents used to provide information on the consultation, including the Portfolio Holder briefing note, letters sent to staff and parents, and presentations given to the settings and Trade Unions;
 - (e) budget and staffing information for the three nurseries;
 - (f) minutes of informal Cabinet meetings;

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2.5 It was agreed that 10 members of staff and 11 Councillors, would be interviewed by the review team. These were carried out as follows:-

Date	Name	Position
05.10.23	Council Officer	Group Finance Manager
	Council Officer	Assistant Director, Education & Inclusion
09.10.23	Councillor Lyndsey Downes	Independent Ward Councillor for Freshney Ward
	Councillor Sophia Farren	Labour Ward Councillor for Sidney Sussex Ward
	Councillor Charlotte Croft	Conservative Ward Councillor for Scartho Ward
10.10.23	Councillor Philip Jackson	Leader of the Council
	Councillor Ron Shepherd	Cabinet Member and Conservative Councillor for Scartho Ward
	Councillor Ian Lindley	Conservative Ward Councillor for Scartho Ward
	Councillor Steve Holland	Independent Ward Councillor for Freshney Ward
11.10.23	Councillor Tanya Brasted	Conservative Ward Councillor for Freshney Ward
	Council Officer	Monitoring Officer
12.10.23	Council Officer	Head of Standards and Effectiveness, Education & Inclusion (Head of Education Standards)
	Council Officer	Assistant Director, Policy, Strategy & Resources
17.10.23	Council Officer	Assistant Director, People & Culture
18.10.23	Council Officer	Director of Children's Services
19.10.23	Councillor Margaret Cracknell	Portfolio Holder for Children's Services
20.10.23	Councillor Kathryn Wheatley	Labour Group Leader
08.11.23	Headteacher	Head of Scartho and Great Coates
	Retired Teacher	Chair of Governors for Great Coates
13.11.23	Councillor Nicola Aisthorpe and Councillor Steve Beasant	Liberal Democrat Group Leader Liberal Democrat Ward Councillor for East Marsh Ward and member of Children and Lifelong Learning scrutiny committee
14.11.23	School Manager	Manager of Reynolds

2.6 We also sought clarification and additional information on the governance of the Council from the Monitoring Officer at several points.

2.7 We wish to express our thanks for the courtesy and co-operation of those who have assisted us in the conduct of this review.

3. BACKGROUND

Background to Children's Services

- 3.1 The previous Director of Children's Services (**DCS**) moved responsibility for early years provision from Education and Inclusion to Early Help. In December 2021, the DCS left and temporary arrangements were put in place with an interim DCS. The interim DCS decided to move early years provision back to Education and Inclusion, but the position for this was not restaffed after the previous postholder retired. The Head of Education Standards and the Head of SEN and Inclusion were asked informally in February 2022 to look after early years provision.
- 3.2 From April 2022, Lincolnshire County Council had been providing improvement support to NELC. The then DCS was seconded on 3 October 2022 and had been acting as the DCS. She was seconded due to her background in safeguarding and experience as DCS in Lincolnshire.
- 3.3 Councillor Cracknell became PfH for Children and Education in May 2022.

Background to the Proposals

- 3.4 Great Coates and Scartho are local authority maintained nursery schools that are funded by the dedicated schools grant. Reynolds is a local authority maintained children's centre which is paid for using the local authority core budget.
- 3.5 The Group Finance Manager indicated that the finance team produce a standard budget model which is updated three times a year for maintained schools. All the information that the finance team have is provided to the schools so that they can develop their own three-year budget plan. The manager of Reynolds told us that the finance team do not advise on the budget, they just support the headteacher to complete budget monitoring through monthly or termly meetings.
- 3.6 There were concerns about Great Coates and Scartho as early as 2018/2019. The Group Finance Manager told us that the three-year budget models and dedicated schools grant reporting showed that the sites were facing financial difficulty.
- 3.7 A federation (the **Western Federation**) was agreed between Scartho and Western Primary School (**Western**) in 2018 when the headteacher of Scartho left. Scartho was struggling both financially and in terms of occupancy rates. The Western Federation had an executive headteacher in place. Great Coates was facing issues similar to those at Scartho in 2018. It had a surplus, but it was diminishing by around £80,000 per year. The headteacher resigned in November 2021 and this left the nursery without a principal, but it did not have the financial resources to recruit to a full-time position. The executive headteacher of the Western Federation agreed to share a headteacher between Scartho and Great Coates. A head of school was appointed for the two nurseries, with the executive headteacher of the Western Federation providing strategic support. Temporary sharing of a headteacher is permitted for a maximum period of 2 years under paragraph 13 of section 3 of the School Teachers' Pay and Conditions Statutory Guidance 2023.
- 3.8 The 2021 and 2022 early years sufficiency reports showed an oversufficiency of early years placements across North East Lincolnshire, and this raised concern in relation to the ability of the nursery sites to raise their occupancy rates. The Assistant Director

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of Education & Inclusion told us there were two places available for every child. General medical practitioner (**GP**) data and headcounts showed a pattern of children generally not attending the provision in the ward in which they live. GP data is used as it is the only reliable data available to the Council and it is collected at least twice a year.

- 3.9 The Manager of Reynolds told us that she had raised with the Council the methodology used to calculate occupancy rates. She said that it was based on numbers of registered places with Ofsted. Reynolds was registered for 52 children, but this did not reflect variations in attendance. There might be days when there were 32 to 34 children in one room per session but occupancy rates were 50%. In addition, childcare was more flexible now than previously and there might be up to 15 children making up one full time place. It was not one child to one full time place.
- 3.10 On 29 March 2023, the governing body of the Western Federation informed the Head of Education Standards that it had decided to dissolve the Federation between Scartho and Western so that both would operate as separate maintained schools. The Head of Education Standards was aware that Western wanted to academise but had asked the executive headteacher and the chair of the governing body to wait to make any decisions due to the discussions being had about the future of the nursery settings.
- 3.11 On 4 April 2023, the Head of Education Standards sent a briefing note on the dissolution to the Assistant Director of Education & Inclusion and Councillor Cracknell. This set out the human resources implications that would result from the need for new leadership structures and the subsequent impact this would have on Great Coates due to its arrangement with Scartho. Having to recruit a headteacher for both Scartho and Great Coates would put significant strain on their individual budgets. The dissolution was set for 1 September 2023, and the viability of the sites was going to be significantly worse when this occurred.

4. LEGAL BACKGROUND

Local Authority Decision Making

- 4.1 NELC is a unitary local authority which exercises the functions of both a district and county council. Those functions include responsibility for securing the provision of education to young persons. The Council has adopted a form of governance termed “executive arrangements” as provided by section 9B(a) of the Local Government Act 2000. In general terms, such a form of governance places most decision making in the hands of the Council’s executive which is subject to scrutiny by one or more overview and scrutiny committees. The executive is made up by the Leader and a cabinet of fellow councillors, each of whom hold a particular portfolio (and are thus referred to as Portfolio Holders). Decisions on major matters (see Key Decisions below) and certain plans and strategies must be made by the Council as a whole in a meeting of all councillors, often referred to as full Council.
- 4.2 The Council’s decision-making principles and procedures are contained within Part 2 of its Constitution, adopted under section 37 of the Local Government Act 2000. The Council’s Constitution broadly follows the format of the modular constitution set out in guidance issued under section 38 of the 2000 Act in 2001 by the then Secretary of State for Transport, Local Government and the Regions: *Local Government Act 2000: Guidance to English Local Authorities* and *New Council Constitutions Guidance Pack*. However, the Council has addressed decision making in Article 4, rather than Article 13 in the modular constitution and has set out who may decide what (responsibility for functions) in one of a number of annexes to that Article 4, rather than in Part 3 in the modular constitution. The current format of the Constitution does not follow the layered concept of main Articles and more detailed Rules, Codes and Protocols set out in the statutory guidance. This may have had the effect of making such important constitutional rules harder to locate by members and officers.
- 4.3 Article 4.02 of the Constitution provides that all decisions of the Council should be made in accordance with the following principles:
- (a) proportionality;
 - (b) due consultation and the taking of professional advice from officers;
 - (c) respect for human rights;
 - (d) presumption in favour of openness;
 - (e) clarity of aims and desired outcomes;
 - (f) an explanation of the options considered prior to reaching a decision;
 - (g) an appropriate assessment of any known or emerging risks;
 - (h) the reasons why the decisions were made are given.
- 4.4 Article 4.03 sets out that there are two types of decision:
- (a) Decisions reserved to full Council;

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- (b) Key Decisions which may only be made by Cabinet, individual Portfolio Holders, or Officers.
- 4.5 Regulation 8 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 defines a Key Decision as:-
- “an executive decision, which is likely—*
- (a) to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the relevant local authority’s budget for the service or function to which the decision relates; or*
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority.”*
- 4.5 In determining the meaning of “significant” for the purposes of paragraph (1) the local authority must have regard to any guidance for the time being issued by the Secretary of State in accordance with section 9Q of the Local Government Act 2000). Whilst there is currently no guidance under section 9Q in this regard, guidance issued under section 38 of the 2000 Act indicates that the local authority should agree as a full council limits above which items are significant and publish these limits.
- 4.6 NELC defines a Key Decision in Article 4.03 of its Constitution as one likely to be significant either financially or socially:
- (a) a financially significant decision is one where the Council incurs expenditure or makes savings which are significant in context of the budget for the service/function to which the decision relates;
- (b) a socially significant decision is one which has significant effects on the communities living/working in an area comprising two or more wards. Consideration is given to the number of service users that will be affected in the wards concerned, the likely views of those affected, and whether the decision carries a significant social, economic or environmental risk.
- 4.7 Appendix 1 to Article 4 is entitled “Responsibility for Functions” and sets out who may decide what in the Council. Section 4 of the Appendix indicates what functions may be exercised by the Cabinet. Individual Portfolio Holders may take key decisions if they are included within the scheme of delegation to Portfolio Holders.
- 4.8 Paragraph 5(v) of Appendix 1 provides that the Portfolio Holder for Children and Education *“can approve or commission the conduct of consultation exercises in respect of those aspects of Council activity within the remit of the Portfolio, provided that the outcome of any consultation is reported to Cabinet for collective decision”*.
- 4.9 However, Councillor Jackson, Councillor Cracknell and the Monitoring Officer all told us that it is not common practice for Portfolio Holders (**PfH**) to take individual decisions. Only the PfH for Environment and Transport holds regular public meetings and takes decisions. Most of the PfHs are briefed informally by heads of service on matters that affect their areas. Minutes are taken at these meetings and circulated to the relevant PfH and the service officers, as well as being escalated to the leadership team monthly to keep them updated. As these are informal briefings, there is no written requirement

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for them to be minuted, though the Monitoring Officer believed that it is a practice that was introduced by the Chief Executive in the past.

- 4.10 Councillor Jackson told us that the culture of NELC is one of open and collaborative decision making, such that any significant matters would typically be taken to Cabinet.
- 4.11 The Monitoring Officer has informed us that it was not uncommon for consultations to be brought to Cabinet for decision. That entailed a report being prepared for Cabinet, outlining the proposals, recommendations and other options, reasons behind the proposals, and any financial, legal, HR, ward, and reputation/communications considerations in relation to the proposals.
- 4.12 The Monitoring Officer indicated that it would be a given that large scale consultations such as on library provision, the local development plan or devolution would be reported to Cabinet. However, he provided two examples of a matter having been put on the forward plan and the report taken to Cabinet even when there was no statutory requirement to hold a consultation process. These were (a) the adoption of a new policy on allowing events and activities on Council land which involved a short period of consultation. This was the subject of a report to Cabinet on 2 October 2019 and (b) the provision of a designated stopping place for Gypsies and Travellers visiting the area. This was the subject of a report to Cabinet on 2 October 2019 which sought approval amongst other things for a public consultation exercise on a shortlist of sites.
- 4.13 Appendix 1 of Article 3 sets out the procedural rules for taking a Key Decision. A key decision cannot be taken unless:
- (a) a notice has been published on the matter at least 28 days prior to the decision being made (the Forward Plan); or
 - (b) (if the decision is to be taken at a Cabinet meeting), notice has been given by the Council at least 5 clear days before hand by posting the meeting details at the Municipal Offices.
- 4.14 The Monitoring Officer has indicated that the normal process for the making of a key decision is as follows:
- (a) A proposal comes forward from a service area;
 - (b) The proposal is discussed at the assistant director group;
 - (c) A report is prepared in the usual executive decision-making format which goes to the leadership team for awareness and discussion;
 - (d) The report is taken to informal Cabinet for further discussion;
 - (e) Notice of the matter is submitted to the Forward Plan of key decisions;
 - (f) The scrutiny panels consult the Forward Plan and call in any reports they wish to see for pre-decision scrutiny;
 - (g) The report goes to formal Cabinet for a public-facing decision.

Statutory Requirements – Education Provision

- 4.15 Under section 13A of the Education Act 1996, local education authorities in England must ensure that their relevant education functions are exercised with a view to promoting high standards, ensuring fair access to opportunity for education, and promoting the fulfilment of learning potential by every person under the age of 20.
- 4.16 A relevant education function includes a function relating to the provision of education for persons under the compulsory school age and are registered as pupils at schools maintained by the authority.
- 4.17 A maintained nursery school is a school specialising in the 3–5-year-old age range which is funded and controlled by the local authority.
- 4.18 Per the 2023 statutory guidance on opening and closing maintained schools, reasons for closing a maintained nursery school include (but are not limited to), where:
- (a) There are surplus places elsewhere in the local area which can accommodate displaced pupils, and there is no predicted demand for the school in the medium to long term;
 - (b) It is no longer considered viable;
 - (c) It is being replaced by a new school;
 - (d) It is to be amalgamated with another school.
- 4.19 There are a number of stages of the statutory process that decision makers should follow when closing a maintained nursery school.

Stage One: Consultation

- 4.20 Section 16 of the Education and Inspections Act 2006 requires the local authority to consult any persons that appear to be appropriate prior to publishing any proposal under section 15.
- 4.21 The 2023 statutory guidance on Opening and Closing Maintained Schools states that the nature and length of the statutory pre-publication consultation is to be decided by the proposer. It also suggests that the proposer may use the consultation to consider a range of options for the future of the school (e.g. amalgamation, academy conversion, federation or closure).
- 4.22 It is suggested by the 2023 Statutory Guidance on Opening and Closing Maintained Schools that consultations should be carried out in term time to allow the maximum number of people to respond, and that proposers should have regard to the Cabinet Office guidance on consultation principles when deciding how to carry out the consultation period.
- 4.23 The Government consultation principles (2018) are as follows:
- (a) consultations should be clear and concise;
 - (b) consultations should have a purpose;

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- (c) consultations should be informative;
- (d) consultations are only part of the process of engagement;
- (e) consultations should last for a proportionate amount of time;
- (f) consultations should be targeted;
- (g) consultations should take account of the groups being consulted;
- (h) consultations should be agreed before publication;
- (i) consultations should facilitate scrutiny;
- (j) Government responses to consultations should be published in a timely fashion;
- (k) consultation exercises should not generally be launched during local or national election periods.

4.24 The Courts have identified four main principles of fair consultation, known as the Gunning Principles:

- (a) Consultation must take place when the proposal is still at a formative stage;
- (b) Sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response;
- (c) Adequate time must be given for consideration and response;
- (d) The result of consultation must be conscientiously taken into account.

Stage Two: Publication

4.25 A local authority in England must publish their proposals to discontinue a maintained nursery school under Section 15 of the Education and Inspections Act 2006. Statutory proposals should be so published within 12 months of the completion of the pre-publication consultation. It is these proposals that can be commented on during the statutory representation period.

4.26 The information to be contained within such proposals, and the manner in which they must be published, are prescribed by Part 4 of the School Organisation (Establishment and Discontinuance of Schools) Regulations 2013.

4.27 Schedule 2 of the 2013 Regulations provide that the following information must be contained in the proposal to close a maintained nursery school:

- (a) the name and contact address of the local authority publishing the proposals, and the name, address and category of the school proposed to be discontinued;
- (b) the date for which the closure is proposed;
- (c) a statement explaining the reason why the closure is considered necessary;

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- (d) the numbers, age range, sex, and special educational needs of pupils for whom provision is currently made at the school;
- (e) a statement and supporting evidence about the need for school places in the area including whether there is sufficient capacity to accommodate displaced pupils;
- (f) details of the schools at which pupils at the school to be discontinued will be offered places;
- (g) a statement and supporting evidence about the impact on the community of the closure of the school and any measures proposed to mitigate any adverse impact;
- (h) for maintained nursery schools, a statement setting out the local authority's assessment of the quality and quantity of the alternative provision compared to the school proposed to be discontinued and the proposed arrangements to ensure the expertise and specialism continues to be available; and the accessibility and convenience of replacement provision for local parents;
- (i) details of length and journeys to alternative provision.

4.28 Paragraph 12 of Part 4 of the 2013 Regulations provides that:

- (a) the local authority making the proposal must publish the proposal on a website and publish a notification of it in a local newspaper;
- (b) any such publication must include details of how a copy of the proposal may be obtained, the address to which objections or comments should be sent, and the date by which they should be sent;
- (c) a copy of the proposal must be sent to the governing body of the relevant school on the date it is published on a website.

4.29 In accordance with the 2023 Statutory Guidance on Opening and Closing Maintained Schools, the proposer of the closure of a maintained nursery school should set out plans to develop alternative early years provision clearly demonstrating that it will be at least equal in quantity to the provision provided by the nursery school with no loss of expertise and specialism; and how replacement provision is more accessible and more convenient for local parents.

4.30 The proposer must also set out whether the alternative early years provision will integrate preschool education with childcare services and/or with other services for young children and their families where the relevant school includes early years provisions.

Stage Three: Representation

4.31 As required by the 2023 Statutory Guidance on Opening and Closing Maintained Schools, proposers should consult organisations, groups and individuals that they feel to be appropriate during the representation period.

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- 4.32 The representation period begins on the date of publication and *must* last for four weeks. Any person or organisation can submit comments on the proposals to be taken into account by the decision maker. It is suggested by the 2023 Statutory Guidance on Opening and Closing Maintained Schools that representations should be forwarded by the local authority to the proposer to make them aware of local opinion.
- 4.33 The decision maker must consider all views submitted during the representation period and be satisfied that the proposer has had regard to the statutory process.

Stage Four: Decision

- 4.34 The local authority will be the decision maker on a proposal to discontinue a maintained nursery school unless the proposal is related to another proposal which is to be decided by the Schools Adjudicator.
- 4.35 Decision makers must have regard to the guidance for decision makers contained in the 2023 statutory guidance. Decision makers are expected to adopt a presumption against the closure of maintained nursery schools, such that there must be a strong case for closure.
- 4.36 The decision maker should be satisfied that there is sufficient capacity in the local area to accommodate displaced pupils and should consider the quality of the alternative placements balanced against the need to reduce excessive surplus capacity in the system.
- 4.37 The decision maker should have regard for the local context in which the proposals are being made, taking into account the nature of the area, the age of the children involved and, where applicable, alternative options considered for reducing excess surplus capacity.

5. NURSERY CLOSURE CONSULTATION PROCESS

- 5.1 After her appointment in October 2021, the Head of Education Standards was asked by the Assistant Director of Education & Inclusion to work with her on addressing the issues facing the settings. The Assistant Director of Education & Inclusion asked the Head of Education Standards to compile the information on the problems into a briefing note. The first iteration of this briefing note was received by the Assistant Director of Education & Inclusion on 29 September 2022. The next steps in this briefing note were:

“The Director of Children’s Services to consult with the Portfolio Holder for Children, Education and Skills and Scrutiny to seek agreement on the recommendations in this briefing note”

This step was removed from the next iteration of the briefing note.

- 5.2 Another officer sent this briefing note to the Assistant Director of People & Culture on 29 September 2022 and asked the Executive Partner for People & Culture to advise the Assistant Director of Education & Inclusion and the DCS. On 11 November 2022, the Executive Partner for People & Culture shared advice regarding the staff consultation with the DCS and the Assistant Director of Education & Inclusion by email.
- 5.3 It is apparent from an email sent by the Assistant Director of Education & Inclusion to the Head of Education Standards on 10 November 2022 that the DCS had agreed on the previous evening that the Assistant Director of Education & Inclusion could ‘*get on with it*’. The email then states that Councillor Cracknell was briefed the morning of 10 November 2022 by the Assistant Director of Children’s Education & Inclusion, and that the briefing note had been left for her to pick up.
- 5.4 An email sent by Councillor Cracknell’s assistant indicates that, by 18 November 2022, Councillor Cracknell had not picked up the briefing note left for her. Her assistant printed a copy and left it in Councillor Cracknell’s tray in the Town Hall. There is no signing procedure for documents when collected: they are left in the pigeonholes and councillors come and collect their post as and when they are in the Town Hall. Councillor Cracknell’s assistant has often printed agendas for Councillor Cracknell and let her know via email or phone that they are in her tray, but Councillor Cracknell does not let her know when she has collected them.
- 5.5 It is therefore unclear when Councillor Cracknell received this briefing note. According to a Council response to a Freedom of Information Act request, Councillor Cracknell, was briefed officially in December 2022, and she said she first saw the briefing note on 12 December 2022. The Head of Education Standards recalled that there was a Microsoft Teams meeting with Councillor Cracknell on this date to discuss the briefing note, and that Councillor Cracknell agreed it at this meeting. However, the Head of Education Standards and the Assistant Director of Education & Inclusion thought that Councillor Cracknell was aware of the closure proposals in October 2022.
- 5.6 The briefing note was updated in February 2023 and in an email to her assistant on 14 February 2023, Councillor Cracknell confirmed that she agreed with this briefing note. The next steps in this briefing note were as follows:

- (a) *“The Director of Children’s Services to consult with the Executive Leadership Team and the Portfolio Holder for Children, Education and Skills*

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- (b) *Reports to be presented to Informal Cabinet and Cabinet to seek a decision on the recommendations in this briefing note*
- 5.7 The reference to the Executive Leadership Team is to that of the Council (i.e., the Chief Executive, Deputy Chief Executive, Chief Finance Officer and the Directors of the various service areas etc).
- 5.8 A Children's Services Leadership Team meeting took place on 21 February 2023. The minutes show that the Assistant Director of Education & Inclusion raised the matter of the nurseries provision at this meeting. The team supported the matter being taken to informal Cabinet in March to seek approval to close all three nurseries, and it was agreed that the Assistant Director of Education & Inclusion would attend leadership team meetings to provide an update in advance of Cabinet.
- 5.9 On 23 February 2023, the Assistant Director of Children's Services' assistant confirmed in an email that she had provisionally booked an informal Cabinet meeting for 21 March 2023 for the matter to be discussed at. The Assistant Director of Education & Inclusion told us that the DCS was due to attend in place of the Assistant Director of Education & Inclusion and take the report with her to brief the Cabinet. On 3 March 2023, the Assistant Director of Education & Inclusion's personal assistant (PA) deferred the item going to Cabinet to June 2023. It is unclear why the item was deferred. The PA had only been in post a few weeks at that point and was not familiar with the matter at the time. The PA has no written record relating to this. It is assumed that she was given the instruction verbally by the Assistant Director of Education & Inclusion but we have been unable to speak to the Assistant Director to verify this.
- 5.10 According to notes of meetings taken by the Democratic and Scrutiny Team Manager, the matter was first discussed at informal Cabinet on 12 June 2023.
- 5.11 There is no indication that Children's Services carried out the next steps suggested in the briefing note, other than discussion with the PfH for Children, Education and Skills. Cabinet members have indicated that they were unaware of the proposals until 8 and 9 June 2023, after the consultation had been made public. The Group Finance Manager informed us that the finance team were not directly consulted about the proposals, and it is evident from emails that the Monitoring Officer was not engaged with until June 2023, after the consultation was live.
- 5.12 Officers next engaged with Councillor Cracknell on 4 April 2023, when the Head of Education Standards sent her a briefing note on the dissolution of the Western Federation. In her interview, the Head of Education Standards told us that the dissolution impacted the consultation timeline in that it was one of the reasons for the proposed closure date being 31 August 2023.
- 5.13 There was little progression of the matter between April 2023 and June 2023 as the Head of Education Standards was on leave.
- 5.14 It is also possible that the consultation was not progressed because local government elections took place on 5 May 2023, preceded by the pre-election period starting on 27 March. Paragraph 34 of the Code of Recommended Practice on Local Authority Publicity, issued on 31 March 2011 by the Secretary of State under section 4 of the Local Government Act 1986, advises that during the period between the notice of an election and the election itself, local authorities should not publish any publicity on controversial issues or report views or proposals in such a way that identifies them with any individual members or groups of members.

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- 5.15 The Head of Education Standards told us that the consultation was originally planned to launch in mid-May. The Assistant Director of Education & Inclusion and Councillor Cracknell agreed to go ahead after May, and on 5 June 2023, the Head of Education Standards requested a meeting with the People & Culture Business Partner for Schools to discuss a revised timeline.
- 5.16 On 7 June 2023, the Head of Education Standards confirmed in an email to Councillor Cracknell and the DCS that *“we are now in a position to launch the formal public consultation, and consultation with staff, about the proposed closure of Great Coates Village Nursery, Scartho Nursery School and Reynolds Day Care – all subject to your agreement.”*
- 5.17 The timeline proposed in that email was as follows:
- (a) *“8/6/23 – Email from [the Head of Education Standards] to setting leaders and chairs of governing bodies announcing the start of the public/staff consultation. Leaders to distribute email to all staff;*
 - (b) *9/6/23 – Email from [the Head of Education Standards] to setting leaders with parent letter template. Leaders to distribute to all parents at the settings within 2 working days;*
 - (c) *9/6/23 – Copy of public consultation letter placed on FFIS page, sent to PVI settings, maintained school headteachers, sent out on social media;*
 - (d) *9/6/23 – [the People & Culture Business Partner for Schools] sends out Section 188 notice to Trade Unions and HR1 form to the Government office;*
 - (e) *12/6/23 – Collective Consultation TEAMS meeting at 10am with Trade Unions. Delivery of presentation to unions about proposed closure. 30 days consultation to include meetings at each setting;*
 - (f) *Mid July – following closure of consultation period, a decision will go to Cabinet regarding closure and the legal DFE closure process will commence if agreed by Cabinet. Staff individual consultations can then commence.”*
- 5.18 The DCS confirmed her agreement on 7 June 2023. Councillor Cracknell initially did not respond to attempts to contact her, but the Head of Education Standards told us that Councillor Cracknell phoned her on 8 June 2023 to give her approval. After the call, the Head of Education Standards emailed the Assistant Director of Education & Inclusion and the DCS at 13:46 to confirm that Councillor Cracknell had contacted her over the phone *“to give her verbal agreement to go ahead with the nurseries consultation. I’ll push the button.”*
- 5.19 There is no written record of this discussion, and there are differing accounts of what was agreed.
- 5.20 The Head of Education Standards recalled that Councillor Cracknell confirmed that she had seen the email of 7 June 2023 containing the consultation timeline. The Head of Education Standards asked Councillor Cracknell if she gave her approval to commence the consultation and Councillor Cracknell agreed to launch it.

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- 5.21 Councillor Cracknell did not recall the phone call but noted that if it was in writing then it must have happened. Councillor Cracknell indicated in an email to us that she was in meetings related to Children's Services throughout the day on 8 June and that a phone call would only have taken place in the evening. Councillor Cracknell told us in interview that she was not made aware of the impending issue and noted that the process moved very quickly – she had seen the February briefing note with the next steps to go to informal Cabinet and executive leadership, then in June, the proposal was to start the consultation. She feels she may have misinterpreted the word 'consultation' and not fully understood what the Head of Education Standards had meant as she was normally briefed by the DCS or the Assistant Director of Education & Inclusion, not the Head of Education Standards.
- 5.22 The Assistant Director of Education & Inclusion told us that there had been debate about whether this was a matter that should go to formal Cabinet and be put on the Forward Plan of key decisions. There were concerns that going to formal Cabinet may predetermine the outcome. The view in Children's Services was that the decision to start the consultation did not need to be one taken by formal Cabinet as Councillor Cracknell had constitutional power to approve the consultation in her capacity as Portfolio Holder.
- 5.23 On 8 June 2023, the DCS sent an email to Children's Services informing them of the consultation and asking them to send a copy of the email to all staff that day. Parents were to be sent a letter within the next two working days.
- 5.24 The Head of Education Standards told us that no communication went to parents first, but some of the staff took it upon themselves to ring the nurseries. Some staff had children in the nurseries, a fact which the Assistant Director of Education & Inclusion, the Head of Education Standards and the DCS were not aware of. Some parents then contacted ward councillors on 8 and 9 June before those ward councillors and all the staff knew.
- 5.25 It is clear from an email from the Executive Partner for People & Culture that the People & Culture Business Partner for Schools had communicated with the Trade Unions prior to the email sent out by the DCS. The Head of Education Standards and told us there was a meeting on 12 June 2023 to start formal consultation at which a presentation was given to the Trade Unions providing the financial positions and projected deficits, as well as the reasons for presuming the deficits would not improve.
- 5.26 The Monitoring Officer told us that the Council's Legal Services were not informed of the consultation until 12 June 2023 when there was an informal Cabinet meeting and the nurseries had been put on the agenda as an extraordinary item.
- 5.27 The minutes of that informal Cabinet record that the Assistant Director of Education & Inclusion provided an update on the potential closure of the sites. She highlighted that they had been running a deficit budget for two years and were running with 40% occupancy levels, with there being more provision than needed in the Borough. It was also noted that keeping them open would be costly due to the need for new headteachers and to keep the buildings up to standard. The Assistant Director of Education & Inclusion informed the Leader that the matter was expected to come before Cabinet in the summer. Councillor Cracknell commented that she had been kept informed of the situation.

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- 5.28 It is evident that the Children and Lifelong Learning Scrutiny Panel was not consulted at this pre-publication stage. On 13 June 2023, Councillor Lyndsey Downes sent an email to members of the Scrutiny Panel asking for a special meeting to share their views on the consultation. Councillor Matthew Patrick responded on the same day and stated, *"I hope that the panel will join my disappointment that again we feel like an afterthought in this process"*.
- 5.29 Further, it does not appear that scrutiny had been factored into the post-publication timeline. It is not mentioned in the timeline laid out in paragraph 5.17 above and in an email on 15 June, Councillor Downes highlighted to Councillor Steve Holland and Councillor Paul Henderson that Cabinet was due to meet before scrutiny. It is apparent from an email sent by the Assistant Director of Education & Inclusion on 19 June to a number of People & Culture officers, the Head of Education Standards, the Democratic and Scrutiny Team Manager, the DCS, and the Monitoring Officer that where a potential meeting of the scrutiny panel might fit into the timeline prior to a formal Cabinet meeting was only being considered whilst the consultation was already in progress.
- 5.30 On 13 June 2023, the Council's communications team emailed the councillors with a template response for them to use. They were also asked for their interest in an all-member briefing meeting to take place on 15 June 2023. Cabinet members and Councillors Downes and Henderson attended this meeting.
- 5.31 On 20 June 2023, the Monitoring Officer met with the Democratic and Scrutiny Team Manager and others to discuss the legal and democratic processes, The contents of the discussion were summarised by the Monitoring Officer in an email following that meeting. The position was that the consultation should be extended to take the pressure off and allow for a governance process to be mapped out in a reasoned and managed way. The Assistant Director of Education & Inclusion passed on this proposal to Councillor Cracknell in an email on 20 June. Councillor Cracknell stated in her reply that she needed to speak to Cabinet before deciding. She confirmed in an email on 21 June 2023 that the matter would be discussed at a private Cabinet the next day.
- 5.32 The Monitoring Officer sent an email to Councillor Cracknell on 22 June 2023 reiterating the proposal to extend and the reasoning behind the advice. Councillor Cracknell did not receive this email prior to private Cabinet and thus did not share it with Cabinet. Rob Walsh informed the Monitoring Officer on 23 June 2023 that Cabinet was not minded to extend the consultation unless there is a risk of ultimate challenge, which the Monitoring Officer believed there was. On 23 June 2023, the Monitoring Officer sent Councillor Jackson the advice he had sent to Councillor Cracknell.
- 5.33 It was decided on 28 June 2023 that the consultation would be extended by 4 weeks. This was publicly announced on 3 July 2023. The People & Culture Business Partner for Schools also sent out an email that day informing colleagues that the public consultation period was to be extended from 7 July to 4 August 2023.
- 5.34 On 10 July 2023, the Monitoring Officer advised the Assistant Director of Education & Inclusion by email to make an entry onto the Forward Plan of key decisions for September on a speculative basis.

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- 5.35 On 14 July 2023, it was publicly announced that the consultation would end, and the nurseries were to remain open as normal. On 1 August 2023, the Council issued a press release that it had agreed to work with the nurseries to look at business plans and explore options for a successful future, with Cabinet to review progress and determine further actions in October 2023.

6. ABILITY TO ENGAGE WITH THE PROCESS

Decision Makers

- 6.1 In their interviews, Councillor Jackson and Councillor Shepherd both told us that they were not informed of the proposals prior to the launch of the consultation exercise. The matter was not discussed at informal Cabinet prior, nor at private Cabinet. As discussed above, the nursery proposals were intended to be discussed at an informal Cabinet meeting on 21 March 2023. However, this was deferred until June 2023.
- 6.2 Councillor Jackson and Councillor Shepherd both commented that they found out about the consultation exercise when they were contacted by members of the public asking for information beginning on 9 June 2023. Both were of the view that the Cabinet should have been involved at a much earlier stage to discuss the political and public implications of the proposals.
- 6.3 On 12 June 2023, the Assistant Director of Education & Inclusion gave an update on the nursery proposals at an informal Cabinet meeting. The minutes from this meeting read:
- “It was noted that they had all been running a deficit budget for the last two years and had been asked to submit a plan for remaining open. They were currently running with 40% occupancy levels. Keeping them open would be expensive given the need to employ a head teacher and to keep the buildings up to standard. It was noted that there were currently three private nursery places for every child in the Borough so there was more provision than needed.”*
- 6.4 On 20 June 2023, it was suggested to Councillor Cracknell that the consultation period should be extended to 4 August 2023. Councillor Cracknell informed the Assistant Director of Education & Inclusion that she needed to discuss with Cabinet, and that this would be done at a private Cabinet meeting on 22 June. On 22 June at 11:43, the Monitoring Officer emailed Councillor Cracknell to advise her of the risks of not extending the consultation period resulting from the lack of proper governance planning before the launch of the consultation. At the private Cabinet meeting, Cabinet decided against extending the consultation period unless there was a risk of judicial challenge. On 23 June, it became apparent from an email from the Assistant Director of Education & Inclusion to the Monitoring Officer and the DCS that Councillor Cracknell had not seen the advice email from the Monitoring Officer, and thus had not used it to brief Cabinet at the meeting. The Monitoring Officer sent the advice that he had sent Councillor Cracknell to Councillor Jackson on 23 June at 13:15.
- 6.5 At informal Cabinet on 26 June 2023, Cabinet members requested a factsheet containing all relevant information (i.e. provision details, occupancy levels, where children were coming from to attend the settings). It was also agreed that officers would report back to Cabinet with timelines for a two and a four-week extension of the consultation period.
- 6.6 On 28 June, the Assistant Director of Education & Inclusion confirmed in an email that Cabinet had agreed to extend the consultation period. However, there is no indication in the documentation that we have seen that Cabinet had received the information requested. They had also not had information on the various timelines for the extended period. It is clear from the Assistant Director of Education & Inclusion’s email that the timelines were not going to be finalised until 30 June at the earliest.

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- 6.7 On 29 June 2023, a 'Save Scartho Nursery' public meeting took place attended by Councillor Shepherd and Councillor Jackson, along with Ward Councillor Lindley. Following this meeting, Councillor Jackson emailed the Executive Director of Place & Resources on 30 June. In his email, Councillor Jackson highlighted that councillors were unable to effectively answer questions posed by the public on both the proposals and the possible extension of the consultation period due to the lack of information that Cabinet had received. He requested a meeting with the Executive Director of Place & Resources and the other Cabinet Members to discuss and collectively make any necessary decisions. The Executive Director of Place & Resources suggested he meet with the DCS and the Assistant Director of Education & Inclusion, with a member of the communications team present also, and Councillor Jackson asked her to set a meeting up for that afternoon.
- 6.8 Councillor Jackson told us in his interview that following the Scartho meeting, Cabinet held regular discussions with officers to try and get information. However, he commented that he found it difficult to get information, and he remained unsure as to how robust the evidence for the proposals was as the officers were not very forthcoming when asked questions. He suspected that this was because the information was not readily available.
- 6.9 Councillor Shepherd commented that the Council was normally good at keeping councillors informed, but the nursery consultation seemingly fell through the gaps, and most of the guidance Cabinet received came from Councillor Jackson.

Ward Councillors

- 6.10 The Ward Councillors were not informed of the proposals prior to the launch of the consultation exercise. On 13 June 2023, the communications team sent an email to all councillors with a template response to residents that outlined the reasons why the proposals are being considered and how residents could give their views.
- 6.11 It is evident from the interviews conducted that even as the consultation progressed, the Council did not provide the Ward Councillors with any specific information in relation to the proposals. Councillor Downes and Councillor Holland (along with fellow independent Councillor Henderson) engaged with officers to request information.
- 6.12 On 13 June 2023, councillors were asked to express interest in a briefing meeting to take place on 15 June 2023. Councillor Henderson and Councillor Downes attended this meeting along with the whole of the Cabinet. It is unclear what exactly was discussed at this meeting, but on 16 June 2023 in an email to Councillor Downes, the Head of Education Standards expressed that she had not been able to explain things properly during the meeting. She offered to meet with Councillor Downes, Councillor Holland, and Councillor Henderson on 19 June. Councillor Downes informed us that the Head of Education Standards assured them that they would be able to get the detail they needed to devise a business plan.
- 6.13 On 22 June 2023, Councillor Downes emailed the Head of Education Standards to request a meeting as she felt that the full facts of the financial situation of Great Coates had still not been shared, and as such there was a lack of transparency. The Monitoring Officer responded that there were a lack of papers that could be shared with the Ward Councillors so officers could not provide any further information.

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- 6.14 On 23 June 2023, Councillor Holland responded to the Monitoring Officer, highlighting that he felt there was a clear disparity between the information being supplied by officers in relation to the proposals, and the information coming from Great Coates regarding their financial situation. He felt that since there was such a conflict, it would not be unreasonable to expect precise figures to be made available to explain the Council's position and claims of 'very significant budget deficits'.
- 6.15 On 30 June 2023, Councillor Holland emailed the DCS and Councillor Cracknell requesting financial information for Great Coates and stated that the governing body also did not have the information though they had requested it. On 2 July, Councillor Cracknell responded that she would ask officers to provide the information requested.
- 6.16 On 10 July, Councillor Holland again emailed the DCS and Councillor Cracknell as he had not yet received the information requested. He informed them of his intent to trigger a Councillor Call for Action (a mechanism for enabling elected members to bring matters of ward concern to the attention of the Council, via the scrutiny process) to obtain the information via the relevant scrutiny panel as without it, they could not effectively put together a business plan for the setting, nor appropriately respond to the consultation. The consultation exercise was halted before the Call for Action could be triggered.
- 6.17 Councillor Farren told us that the accounts for Reynolds were not shared with her, nor were they available for public inspection. She said that she requested the minutes of some meetings where the Council had discussed Reynolds' business plan with the manager so that she could highlight things that she felt had not been taken into consideration, but neither the minutes nor the business plans were provided. Councillor Farren also commented that the budgets and projections, as well as figures for capacity, were shared with the manager of Reynolds, but that they were incorrect.

Stakeholders

- 6.18 It was confirmed in an email between the Executive Partner for People & Culture and the Assistant Director of People & Culture on 9 June 2023 that communication had been established with Trade Unions prior to the consultation being made public. Consultation with Trade Unions officially began on 12 June 2023 when notices were issued regarding the intention to consult on the closures.
- 6.19 On 20 June 2023, the manager of Reynolds, the head of school for Great Coates and Scartho, the executive head of the Western Federation, and Trade Unionists were informed of upcoming employee engagement sessions on 26 June, 27 June, and 28 June. A presentation was prepared by the Head of Education Standards and Effectiveness for Education & Inclusion and People & Culture for use at these sessions. The presentation provided a summary of the reasons for the proposals, information about redeployment and the meaning of being 'at risk' or a 'redeployee', and the next steps.
- 6.20 On 22 June 2023, the secretary of the Grimsby branch of GMB contacted the Head of Education Standards asking for breakdowns of the budgets for each setting, their financial position and the £1.5 million repair costs, how the Ofsted inspections impact finances, and predicted costs for redundancies.

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- 6.21 The Head of Education Standards passed this email on to the Assistant Director of Education & Inclusion and the Executive Partner for People & Culture. The Executive Partner for People & Culture forwarded it on to the Delivery Manager for People & Culture and noted that they needed to respond in a timely manner.
- 6.22 The secretary of the Grimsby branch of GMB sent a further email to the Head of Education Standards to inform her that the Trade Union was seeking an extension of the consultation period by 6 months so that they could have an independent review of the decision to close the settings.
- 6.23 The Head of Education Standards and Effectiveness for Education & Inclusion responded that she would pass the request on and clarified that no decision had been made as the matter was still at the consultation stage. This too was passed on to the Assistant Director of Education & Inclusion, as well as forwarded to the Delivery Manager for People & Culture by the Executive Partner for People & Culture for a formal response.
- 6.24 By 5 July 2023, the Trade Union still had not received a formal response. It is unclear exactly what information the Trade Unions ended up receiving directly in response to their questions.
- 6.25 The head of school for Scartho and Great Coates and the manager of Reynolds heard about the consultation on 8 June 2023. The settings have monthly meetings with a member of the finance team to look at the expenditure.
- 6.26 The manager of Reynolds was aware that there was a £55,000 deficit at the end of the 2022 financial year, but they were working on combatting the deficit and had succeeded at reducing the predicted £126,00 deficit for 2023. She told us that although there had always been questions about the sustainability of Reynolds, there had never been any suggestion of closure when she had interviewed for the post in April 2022. Though the Head of Education Standards as her line manager had told her that things were not looking good and that there were sustainability issues that could raise the possibility of closure, this was not in a serious way, and it was made clear that it was just a possibility. She submitted a business plan in October 2022, but never heard any feedback or any concern that the setting might be becoming unviable such that there would be proposals made for closure.
- 6.27 The head of school for Scartho and Great Coates similarly was aware of a deficit but was working on improving it. Like Reynolds, a business plan was submitted for Scartho and Great Coates in October 2022 and no feedback was received, nor were they made aware of any serious cause for concern. The head of the governing body for Great Coates told us that in March 2023, it was forecast that Great Coates would have a building surplus over the next two years. In May 2023, they were back in deficit again, but it was unclear as to where the money had gone. The head of the governing body told us that she was told "rising costs" with no further explanation when she asked. In June 2023, at an engagement meeting with staff, the Head of Education Standards and Effectiveness for Education & Inclusion presented the case she was going to present to Cabinet. The head of the governing body told us that this showed that the deficit for Great Coates had gone from £36,000 in May to £39,000 in June, with £168,000 over the next two years. No further information was given to the settings in relation to their deficits.

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- 6.28 There was never any conversation about the £1.5 million repair figure. The manager of Reynolds told us that she assumed that the repair cost was in relation to the other two settings, as there was nothing specifically identifying it as relating to Reynolds, which was a relatively new build compared to the other settings.
- 6.29 They had the information that was provided in the presentation at the collective consultation meetings with the Trade Unions, but other than that, when staff contacted HR with questions regarding redundancy, they reported to the manager of Reynolds that they were told that they could not be told at that time. The head of school for Scartho and Great Coates and the manager for Reynolds found that the Council was not forthcoming with information when they asked for it and would often only answer certain questions.

The Public

- 6.30 The information provided to the public was very limited. The letter that was sent to parents summarised the reasoning behind the proposals, but there was little in the way of evidence or in-depth information.
- 6.31 At the Scartho public meeting, a member of the public asked a question regarding the £1.5 million improvement work that it was suggested the nurseries required. On 5 July, Councillor Jackson asked the PfH and the DCS whether this could be shared. As discussed above, the position of the Monitoring Officer was that the breakdown should not be shared. The Assistant Director of Education & Inclusion asked the Monitoring Officer and Deputy Monitoring Officer for their thoughts again. The DCS advised that at Lincolnshire County Council, a narrative as to why certain information could not be published would be provided. The Deputy Monitoring Officer agreed with this. It does not appear that this advice was followed, or if it was, the reasoning was not communicated effectively to the public. There were numerous freedom of information requests made by members of the public in attempt to acquire information, and we were told by the manager of Reynolds that parents who had been requesting information had not received direct responses.
- 6.32 On 7 July 2023, a FAQ page was published on the Council's website. This page included information that had been provided in the FOI requests, the occupancy rates for all three settings for both the 2021-22 and 2022-23 academic year, the Schools Financial Benchmarking site for the financial information for Scartho and Great Coates, and Reynolds' outturn for the 2022-23 academic year and the projected deficit for 2023-34. It also stated that only 64% of children living in Great Coates in 2022 accessed their funded place within the ward, and for Scartho, that figure was only 58%.

Financial Information

- 6.33 It should be noted that the Council retains the ability to deal with sensitive (exempt) information in private. Exempt information is defined in Schedule 12A of the Local Government Act 1972 as being information falling within the seven categories, including:
- (a) Information relating to any individual;
 - (b) Information which is likely to reveal the identity of an individual;
 - (c) Information relating to any consultation or negotiations or contemplated consultations or negotiations in connection with any labour relations matter

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arising between the authority or a Minister of the Crown or employees of, or office holders under, the authority;

- (d) Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings;
- (e) Information which reveals that the authority proposes (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment;

- 6.34 In all the circumstances of the case, the public interest in maintaining the exemption must outweigh the public interest in disclosing the information.
- 6.35 Beginning on 3 July 2023, there were numerous discussions around the level of information that could be made publicly available. The Monitoring and Deputy Monitoring Officer took the stance that the financial information that was not already in the public domain should not be shared, and that the breakdown of the £1.5 million repair cost figure was not relevant to the decisions being consulted on. In an email on 5 July, the Deputy Monitoring Officer clarified: *“Of course we should be open & transparent and provide financial information where it is verified and relevant. Financial information about the nurseries not being viable is clearly relevant and will be provided.”*
- 6.36 Also on 5 July, in relation to the collective employment consultation, People & Culture advised that as much information as possible should be disclosed to allow for meaningful consultation. This was followed by further debate about what information should be shared, notably in relation to the £1.5 million repair cost figure and the condition surveys relevant to that. People & Culture were of the view that this information should be shared with Trade Unions as the £1.5 million figure was being seen as a factor in the decision to propose closure.
- 6.37 It is clear from the above that the issues regarding information sharing were largely in relation to the financial implications and the lack of clarity provided by the Council on this point is reflected in the information that we were told that the Ward Members and Stakeholders felt they were lacking, and also the information that was requested by the public through FOI requests.
- 6.38 On 6 July, the Monitoring Officer noted in an email that there were apparent misunderstandings relating to the financial implications of the proposals with a lack of evidence to substantiate the position of the settings requiring £1.5 million investment.
- 6.39 The Monitoring Officer took the position that if the Council was saying that investment was required, then it was "reasonably expected to justify (with evidence) the level of investment". On the Council's FAQ page, it was stated that *“Assets professionals have **assessed** these buildings and **produced an estimate** of costs to bring them to a level that we would want for our children (his emphasis)”*.
- 6.40 The Monitoring Officer requested the evidence that was available for himself to assess, as he was of the view that simply saying *“Currently we have allocated: £150k for Reynolds as we believe this will be a lighter touch. £550k for Scartho to address the main priorities as highlighted above. £800k for Great Coates to address the replacement of the mobile classrooms and some further refurbishment of the site.”* would fall short of reasonable expectation and that was why there were so many enquiries and FOI requests.

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- 6.41 The Monitoring Officer decided to look at what information the Council had in order to see how it could be shared without prejudicing future procurements. In his interview, the Monitoring Officer told us that the information given in the consultation around costings relating to the settings was not robust. Good evidence would have been a survey or architect's report with specific costings, but they only ever got to the stage whereby they had estimates based on officers' past experience with similar works.

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7. FINDINGS

- 7.1 A proposal which could involve the closure of any early years educational provision is likely to attract opposition from those affected and a high degree of local public and press interest.
- 7.2 The definition of a Key Decision is one which has significant effects on the communities living or working in an area comprising two or more wards, considering the number of service users that will be affected in the wards concerned, the likely views of those affected, and whether the decision carries a significant social, economic or environmental risk.
- 7.3 There were two possible views of the decision that was being taken in relation to the nurseries. One is that it was simply a decision to begin a consultation exercise to inform a future decision on the nature of early years educational provision in the three locations of the three nurseries. The other is that it was the start of a process which could well lead to closure of those three nurseries.
- 7.4 A decision to close the nurseries would have been a Key Decision and would have triggered the process set out in the constitution (involving inclusion on the forward plan and determination by a formal Cabinet with provision for call in to scrutiny).
- 7.5 It could be argued that a decision to consult which might inform a future Key Decision is not itself a Key Decision. However, the way in which the consultation process was documented internally and externally made it appear that closure of the nurseries was likely. Children's Services Officers discussed whether the matter should go to formal Cabinet but did not seek advice from the Monitoring Officer. In reality, the consultation process was one which should have been recognised as a Key Decision from the start.
- 7.6 Regardless of whether the decision was a Key Decision, given the likely sensitivity of the consultation topic, the degree of informality taken in the approach to briefing the PfH and seeking her approval was unsatisfactory. It appears that a number of factors led to an urgency to get the consultation out (i.e. the date for the dissolution of the Western Federation, the key officer being on leave and the pre-election period slowing progress), such that things perhaps were not done as thoroughly as they should have been.
- 7.7 The Monitoring Officer has noted that the Council is a largely digital organisation. Given the significance of the consultation process, it was unsatisfactory and surprising that a key briefing note was left in hard copy for the PfH to pick up from her pigeonhole at the Council offices on 10th November 2022 and that the note remained there uncollected for at least 8 days and possibly much longer, to 12th December.
- 7.8 Given the significance of commencing the consultation process, the lack of a written record of the PfH's approval to proceed with the consultation on 8th June 2023 was also unsatisfactory. The PfH's confusion as to the nature of the decision she had taken is indicative of a governance process which should have been recorded more formally.
- 7.9 There was insufficient engagement with stakeholders at the pre-publication consultation stage. The early iterations of the briefing notes suggested that scrutiny and the executive leadership team be consulted on the recommendations, as well as a report being taken to informal Cabinet. As discussed in the report, these next steps were not carried out, such that key parties were not involved in the pre-publication stage. Cabinet and possibly the headteachers of the nurseries should have been

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involved in discussions during the formation of the closure proposals. Consideration should have been given to what information should have been given to ward councillors.

- 7.10 There were misunderstandings of what the phrase ‘consultation’ entailed in the discussions leading up to the formal launch of the consultation, i.e. whether it was meant in the informal pre-publishing sense, or the formal representation sense. Though it is constitutionally within the remit of the PfH to begin a consultation, it is not clear that the Children’s Services officers and the PfH were of joint mind as to what was going to occur after 8 June 2023 and indeed whether the reference to consultation meant a formal, statutory process.
- 7.11 Not enough consideration was given to how to market the consultation to the public. As a result, the purpose of the consultation exercise was communicated poorly. The letters sent out to parents stated “...*North East Lincolnshire Council (NELC) is launching a public consultation to close [nursery] with effect from 31st August 2023 as the school is no longer considered viable.*” This led to a perception among the public and the nurseries that the decision had already been made. Although the communications were later changed to being a consultation on the future of the settings, the exercise could not shake the first impression it gave.
- 7.12 The failure to inform Cabinet and ward members of the proposals before the launch of the consultation meant there was no consistent communication strategy in place. That Cabinet and ward members had not been included in the formation of the proposals, or even been informed of them before the public were, damaged confidence in the integrity of the exercise to a significant degree.
- 7.13 The disparity in the reasoning coming from the officers and the information the nurseries received had meant that it was harder for the reasoning of the Council to be understood. This was exacerbated by the refusal of the Council to explain the position of each nursery, and their lack of transparent and efficient communication with those raising queries.
- 7.14 Whether the relevant information was withheld rightly or wrongly, the failure to provide an effective narrative as to why certain information was not being provided led to a perception that the Council had an underlying agenda (evidenced by some of the freedom of information requests), and that they did not actually have any evidence to back up their position. The lack of agreement on what information should be shared and with whom from the start of the Consultation led to significant debate on the matter nearly a month after the Consultation had been made public.

8. RECOMMENDATIONS

- R1: The Monitoring Officer, supported by Members should carry out a review of the constitution, including a review of the scheme of delegation to PfHs to ensure that it provides a clear and easy to navigate and interpret set of rules for the governance of the organisation.
- R2: The Monitoring Officer should provide training aimed at those responsible for decision making (i.e. PfHs, heads of services and key officers). This should include recognising key decisions and how to put together an effective consultation, including how to engage effectively with stakeholders.
- R3: The Monitoring Officer should create a governance handbook and flowchart to guide decision makers. The governance handbook should include examples of matters which will usually be controversial, and which should be presumed to be a key decision.
- R4: The Monitoring Officer should create a formal system for recording of decisions taken by PfHs (whether or not Key Decisions).
- R5: All Members, particularly PfHs should be able to fully and effectively participate in decision making by digital means. This could be done via compulsory IT training sessions upon becoming a Member.

Wilkin Chapman LLP Solicitors
15th February 2024