

**Committee Name and Date of Committee Meeting**

Cabinet – 18 March 2019

**Report Title**

Determination of proposals to make prescribed alterations to the Willows School

**Is this a Key Decision and has it been included on the Forward Plan?**

Yes

**Strategic Director Approving Submission of the Report**

Jon Stonehouse, Strategic Director of Children and Young People's Services

**Report Author(s)**

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**Ward(s) Affected**

Borough-Wide

**Report Summary**

Following a period of statutory consultation, this report seeks the approval of proposals to make prescribed alterations to the Willows School in line with the requirements of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 by increasing the number of places available and changing the age range of the school.

**Recommendations**

1. That, following a period of statutory consultation and consideration of representations received, approval be granted to make prescribed alterations to the Willows School by permanently changing the registered number of places at the school from 100 to 120 and changing the upper age limit at the school from 16 to 19.
2. That the Secretary of State for Education be informed accordingly.

**List of Appendices Included**

- Appendix 1 Summary of statutory consultation
- Appendix 2 Equalities impact assessment

**Background Papers**

Report to Cabinet – 19 February 2018 – Special Educational Needs and Disability (SEND), Sufficiency and Increase in Educational Provision - Phase 1.

Report to Cabinet – 17 December 2018 – Proposal to make prescribed alterations to the Willows School.

Equalities Impact Assessment, 30 November 2017 - Proposal to increase SEND provision sufficiency in the Borough. (Revised January 2019).

**Consideration by any other Council Committee, Scrutiny or Advisory Panel**

No

**Council Approval Required**

No

**Exempt from the Press and Public**

No

## **Determination of proposals to make prescribed alterations to the Willows School**

### **1. Background**

- 1.1 Following a period of consultation with stakeholders, Cabinet & Commissioners approved a report on 19 February 2018 - Special Educational Needs and Disability (SEND), Sufficiency and Increase in Educational Provision – Phase 1. The report outlined proposals to increase the number of SEND places available in the Borough by an additional 125 places between 2018 and 2021 (minute number 110).
- 1.2 The report outlined details of the growth in the general pupil population in recent years and the subsequent increased need for school places for pupils with a range of SEND needs. Stakeholders were consulted in relation to the type of need and provision and the outcome of consultation informed the proposals to increase capacity and the locations for expansion.
- 1.3 The implications of not having enough SEND provision in the Local Authority area are that there are rising numbers of Rotherham children with Special Educational Needs and Disabilities having their needs met in provisions outside Rotherham. This means some of the most vulnerable children have to travel the furthest distance to school.
- 1.4 Furthermore, the Dedicated Schools Grant (High Needs Budget) is significantly overspent in this area. Indications are that there will continue to be significant increases in out of authority placements should 'in authority' capacity not be increased, leading to further demand on high needs funding allocation as 'out of authority' placements are significantly more expensive than 'in authority' placements.
- 1.5 Within the report to Cabinet of 19<sup>th</sup> February 2018, 10 additional places were identified as being required at the Willows School to meet the needs of pupils with complex learning disabilities / Autism spectrum disorder (ASD) which have subsequently been provided and an amount of £200k capital spend was approved to provide an additional classroom at the school within the 2018/19 financial year, to ensure sufficient capacity for 120 pupils moving forward.
- 1.6 The Willows School is a Local Authority maintained school and is rated as a good school by Ofsted. The 120 pupils on roll have a range of moderate learning difficulties and the school is currently registered for 100 pupils with an age range of 7 to 16.
- 1.7 A report to Cabinet on 17 December 2018 (minute number 72) sought approval to commence a period of statutory consultation on proposals to formally increase the registered number of places at the school from 100 to 120 to reflect the actual number of pupils now on roll at the school as a result of oversubscription and the additional 10 places being provided and, to change the upper age limit at the school from 16 to 19 by prescribed alteration, to enable continuity of education.

- 1.8 Following a period of statutory consultation by the posting of a public notice this report seeks approval of the proposals after consideration of representations submitted during the consultation period.
- 1.9 Should the proposals be approved by Cabinet, the changes will be formally made under the requirements of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 and the Secretary of State for Education will be notified accordingly.

## **2. Key Issues**

- 2.1 The additional classroom approved for installation within the 2018/19 financial year will address the current capacity shortfall issues and enable parents/carers to access their preferred school for their child in future years. The classroom will be fully installed and operational for 1 September 2019.
- 2.2 As outlined in the previous reports referred to in 1.1 and 1.7 of this report, the proposal will also support the positive impact on the Councils Home to School Transport budget and provision, as the proposal would reduce budget pressures as the increased number of permanent places in borough, will reduce reliance on out of authority placements and the additional transport costs incurred longer term.

## **3. Options considered and recommended proposal**

- 3.1 **Option 1:** Maintain the registered number of places at the school at the current level. However as the school is already oversubscribed, this would mean that in future years parents / carers would be unable to secure a place for their child as the schools current registered number is oversubscribed and pupil numbers would need to be reduced back to the registered number.
- 3.2 **Option 2:** it was approved by Cabinet on 17 December 2018 that the Local Authority should undertake a period of statutory consultation on the proposal to Increase the number of registered places at the school on a permanent basis and increase the upper age limit at the school by prescribed alteration to enable the Governing Body to forward plan long term with sufficient capacity to accommodate future cohorts and provide continuity of education post 16, contributing to reducing the pressure on the High Needs Block of the Dedicated Schools Grant.

## **4. Consultation on proposal**

- 4.1 The proposal falls within the requirements of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 because the Local Authority proposes to change the number of pupils in a special school on a permanent basis by 10% or 20 pupils (whichever is the lowest) and to change the upper age range of the school from 16 to 19 which is expected to be in place for more than 2 years (as this is considered a permanent increase).

- 4.2 There is a strong expectation that Local Authorities will consult interested parties, in developing proposals prior to publication of a public notice, as part of their duty under public law to act rationally and to take into account all relevant considerations. This requirement was met by the wide ranging consultation with stakeholders detailed in the report approved by Cabinet on 19 February 2018.
- 4.3 The statutory proposal (public notice) must contain sufficient information for interested parties to make a decision on whether to support or challenge the proposed change. The DfE sets out the minimum that this should include in the form of a template document. The proposal should be accessible to all interested parties.
- 4.4 The proposal must be published on a website along with a statement setting out:
- how anybody can object to, or comment on, the proposal;
  - the date that the representation period ends;
  - the address to which objections or comments should be submitted.

This requirement was met by the relevant information being published on the Council's Website (see appendix 1).

A brief notice which includes details on how the full proposal can be accessed (e.g. the website address) must also be published in a local newspaper. The public notice was published in the Rotherham Advertiser week commencing 7 January 2019.

Within one week of the date of publication on the website, the proposer must send a copy of the proposal and the information set out in the paragraph above to the parents/carers of every registered pupil at the school - where the school is a special school. This requirement was adhered to.

- 4.5 Where the Local Authority is the decision maker, it must make a decision within a period of two months of the end of the representation period. Where a decision is not made within this time frame, the proposal must be referred to the Schools' Adjudicator for a decision.
- 4.6 Once a decision has been made the school should make the necessary changes to the school's records held by the department for Education in the 'EduBase' system and must have done so by the date the change is implemented.
- 4.7 There were 20 representations received during the statutory consultation period. Responses were broadly supportive of the proposals and made reference to the benefits and opportunities that would be available to pupils attending the school and being able to continue their post 16 education in a familiar environment. A summary of the representations received is contained within appendix 1.

## 5. Timetable and Accountability for Implementing this Decision

### 5.1

17 December 2018	Cabinet approval to commence a period of statutory consultation on proposals to make prescribed alterations to the Willows School.
January 2019	Public notice period and submission of proposals to DfE.
1 February 2019	Representation period ends.
18 March 2019	Cabinet determination of proposals.
29 March 2019	Formal notification of Cabinet determination to the Secretary of State for Education.
Summer Term	School to make the necessary changes to DfE records.

## 6. Financial and Procurement Advice and Implications

- 6.1 The estimated capital cost of the proposal to provide space for the additional 10 places at the Willows School and to address the existing oversubscription is £200k and is earmarked and approved against available capital funds.
- 6.2 The new provision and prescribed alterations will enable young people to be placed locally and avoid the need to place with high cost independent providers, the estimated revenue cost saving to the High Needs Block of the Dedicated School Grant will be £30k per place, a £300k saving on full occupation.
- 6.3 There are no known procurement implications at this stage, any future works to be carried out for the alterations would need to be procured in compliance with the European and domestic procurement law and the Council's own Financial and Procurement Procedure Rules.

## 7. Legal Advice and Implications

- 7.1 The Local Authority has a statutory duty under the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007, to consult on the proposals set out in this report.
- 7.2 the DfE Statutory guidance for proposers and decision-makers, deciding prescribed alterations and establishment and discontinuance proposals (April 2016) provides that: 'Although there is no longer a statutory 'pre-publication' consultation period for prescribed alteration changes, there is a strong expectation that schools and Local Authorities will consult interested parties, in developing their proposal prior to publication as part of their duty under public law to act rationally and take into account all relevant considerations'. This requirement has been met by the wide ranging consultation with stakeholders detailed in the report approved by Cabinet on 19 February 2018 - Special Educational Needs and Disability (SEND), Sufficiency and increase in educational provision (Phase 1).

- 7.3 The DfE Statutory Guidance for proposers and decision makers - aking 'prescribed alterations' to maintained schools (April 2016) provides that: Where a Local Authority is the decision maker, it must make a decision within a period of two months of the end of the representation period, where a decision is not made within this time frame, the proposal must be referred to the Schools' Adjudicator for a decision.
- 7.4 The Education Act 1996 requires an English local authority to secure (as far as their powers enable them to do so) efficient primary, secondary and further education in their area (section 13(1); and so far as is compatible with efficient instruction and training and the avoidance of unnecessary expenditure a local authority must exercise its Education Act powers and duties having regard to the general principle that pupils are educated in accordance with the wishes of their parents (section 9). Provision for a permanent increase in pupil numbers at the school assists compliance with the section 13 duty; consultation assists compliance with the section 9 duty.
- 7.5 The Equality Act 2010 imposes a public sector equality duty upon public (including local) authorities, (see section 11 below). The promotion of equality of opportunity includes the removal of a disadvantage suffered by persons with disability, or their carers. The current need to educate Rotherham children out of area because there is insufficient SEND provision within the Borough could amount to such a disadvantage, and the proposed alterations if implemented would minimise that disadvantage.

## **8 Human Resources Advice and Implications**

- 8.1 There are no Human Resource implications to consider from the Local Authority's perspective. Future rising cohort numbers may well lead to further employment opportunities at the school. This however would be for the Governing Body to determine.

## **9 Implications for Children and Young People and Vulnerable Adults**

- 9.1 Implementation of the prescribed alteration in due course would give more children and young people the opportunity to access high quality provision closer to home to meet their educational needs in future years.

## **10 Equalities and Human Rights Advice and Implications**

- 10.1 Section 149 of the Equality Act 2010 requires that public bodies, in exercising their functions, have due regard to the need to:
1. eliminate discrimination, harassment, victimisation and other unlawful conduct under the Act,
  2. advance equality of opportunity and
  3. foster good relations between persons who share a protected characteristic and persons who do not share it.

- 10.2 An Equalities Impact Assessment (Appendix 2) was undertaken on the proposed increase in SEND provision as reported to Cabinet on 19<sup>th</sup> February 2018 and this has been reviewed during the consultation period. The assessment has not identified any potential for unlawful conduct or disproportionate impact and concludes that all opportunities to advance equality are being addressed. The increase in SEND provision within Rotherham will help to ensure sufficient provision for the increasing numbers of children within Rotherham and ensure that appropriate provision is made in accordance with parental preference. By acting to ensure children in Rotherham have access to a high quality school place the Council is promoting equality of opportunity for all children and young people. A further Equalities Impact Assessment was undertaken during the consultation period.
- 10.3 The Council must ensure it meets its public law duties when making decisions, including meeting its public sector equality duty. It must consider all relevant information, disregard irrelevant information, act in accordance with the statutory requirements and make its decision in a fair and transparent manner.
- 10.4 The additional specialist provision will allow more parents and carers to access education for their child within the local area in future years, in an inclusive and innovative learning environment.

## **11 Implications for Partners**

- 11.1 There will be no impact on other special schools within the area as the prescribed alteration supports the recommendations approved by Cabinet on 19<sup>th</sup> February 2018 to create an additional 125 SEND places in Borough to meet rising demand and to reduce current costly out of authority placements, reducing pressure on the High Needs budget within the Dedicated Schools Grant.

## **12 Risks and Mitigation**

- 12.1 There are always risks and uncertainties when school place provision is considered, since future pupil numbers are based on estimations. Over provision at one school could influence pupil numbers at other schools. However, current provision is full or over-subscribed and this trend is set to continue, meaning that more pupils are being placed in provision out of authority increasing the financial burden on the High Needs Block.
- 12.2 The Local Authority has a statutory duty under the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013, to ensure a sufficiency of school places in areas of current and future need.



### 13 Accountable Officer(s)

Pepe Di'lasio, Assistant Director of Education

Dean Fenton, Head of Service – School Planning, Admissions and Appeals

Approvals obtained on behalf of:-

	<b>Named Officer</b>	<b>Date</b>
Chief Executive	Sharon Kemp	03/03/19
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	28/02/19
Assistant Director of Legal Services (Monitoring Officer)	Stuart Fletcher	28/02/19
Assistant Director of Human Resources (if appropriate)	Amy Leech	22/01/19
Head of Human Resources (if appropriate)	Lorna Byne	25/01/19

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