

Committee Name and Date of Committee Meeting

Cabinet – 18 October 2021

Report Title

Prescribed Alterations to the Willows Special School

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

Yes

Strategic Director Approving Submission of the Report

Suzanne Joyner – Strategic Director, Children and Young People’s Services

Report Author(s)

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Ward(s) Affected

Borough-Wide

Report Summary

Pre statutory consultation on proposals to change the number of planned places at the Willows Special School under the Department for Education prescribed alterations process has been completed. This report seeks approval to commence a period of statutory consultation on the proposals by the posting of a public notice.

Recommendations

1. That approval be granted for the commencement of a period of statutory consultation in relation to proposals to make prescribed alterations to the Willows Special School.
2. That a further report be submitted to Cabinet in January 2022 outlining the outcome of statutory consultation and seeking determination of the proposals.

List of Appendices Included

Appendix 1 Equalities Impact Assessment (Initial screening)
Equalities Impact Assessment (Final Screening)

Appendix 2 Environmental Impact Assessment

Appendix 3 Summary of pre statutory consultation

Background Papers

The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013

School Organisation (Maintained Schools) guidance for proposers and decision makers (January 2014)

Special Education Needs and Disability (SEND) phase 1 capital projects approved by Cabinet on 19th February 2018.

Determination of proposals to make prescribed alterations at the Willows School under the requirements of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 approved by Cabinet on 18th March 2019.

Report to Cabinet seeking approval to commence a period of pre statutory consultation on proposals to make prescribed alterations to the Willows School on 14th June 2021.

Consideration by any other Council Committee, Scrutiny or Advisory Panel

No

Council Approval Required

No

Exempt from the Press and Public

No

Prescribed Alterations to the Willows Special School

1. Background

- 1.1 Following a report to Cabinet on 14th June 2021, a period of pre-statutory consultation was approved in relation to proposals to make prescribed alterations to the Willows Special School under the requirements of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013.
- 1.2 The report to Cabinet outlined the previous permanent changes to the number of registered places at the school with an increase from 100 to 120 planned places and a change to the age range from 7-16 to 7-19 made by prescribed alterations under the requirements of the 2013 regulations.
- 1.3 The report outlined that, as a result of the continued increase in cohort size, it was necessary to increase the registered number of places at the school further. The proposal falls within the requirements of 2013 Regulations because the number of pupils in a special school on a permanent basis has increased by 10% or 20 pupils (whichever is the lowest) which is expected to be in place for more than 2 years (as this is considered a permanent increase).
- 1.4 The report also outlined that a capacity assessment at the school completed in April 2021 had determined the capacity of the school to be sufficient for 150 pupils following the recent LA funded expansion project and school funded adaptations.
- 1.5 The school is a Local Authority maintained school and is rated as a good school by Ofsted. The proposal to make a permanent increase in the registered number of places available falls within the Department for Education's agenda to expand successful (good and outstanding rated schools) and popular (demand led) schools.
- 1.6 The number of pupils on roll at the school as at September 2021 was 175. Due to Covid 19 restrictions, this had impacted on post 16 transitional arrangements for pupils which adds to the numbers and plans are in place to commence transitional arrangements from September 2021 as part of 6th form opportunities, which will eventually reduce numbers of pupils on site at the Willows school back to 150.
- 1.7 This report seeks approval to commence a period of statutory consultation on proposals to increase the number of planned places at the school from 120 to 150 following a period of pre statutory consultation with stakeholders.

2. Key Issues

- 2.1 As the current number of pupils on roll exceeds the registered number of 120 places by more than 10% or 20 pupils (whichever is the lowest), and the registered number is expected to be exceeded by the above criteria for more than 2 years, it is necessary to complete a prescribed alteration process.

2.2 As the above criteria has already been exceeded for 12 months, it is necessary to complete the prescribed alteration within the next 12 months to meet statutory requirements as the registered number of places will still be in excess of 10% or 20 pupils beyond 2 years.

3. **Options considered and recommended proposal**

3.1 **Option 1:** Maintain the registered number of places at the school at the current level of 120. However, as the school is already oversubscribed by above the criteria threshold and has been for the past year, 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, which would not be achievable within the timeframe.

3.2 The impact of option 1 being that places would need to be sought at other schools or out of authority to meet demand as all special schools in Rotherham are full to their registered number and this trend is set to continue. This would have an impact financially as out of authority places can be more expensive and subsequent transport costs would be increased.

3.3 **Option 2: (Recommended Proposal):** Increase the registered number of places from the current 120 to 150 by prescribed alteration to enable parental preferences for placements to continue to be satisfied in the future avoiding the need to seek placement at another school or out of authority against the wishes of parents/carers.

4. **Consultation on proposal**

4.1 As outlined above, the proposal falls within the requirements of the 2013 Regulations. Following Cabinet approval of the report on 14th June 2021, a period of pre-statutory consultation was undertaken with stakeholders between 29th June and 9th August 2021.

4.2 There is a strong expectation that Local Authorities will consult interested parties (referred to within DfE guidance as pre statutory consultation), in developing proposals. A report should then be brought to Cabinet outlining the outcome of pre statutory consultation on proposals and seeking approval to commence a period of statutory consultation by the publication of a public notice as part of their duty under public law to act rationally and to take into account all relevant considerations.

4.3 Pre-statutory consultation was undertaken by a letter outlining the proposals being sent to the stakeholders below (appendix 3):

- Parents/carers of all children and Young People on roll at the Willows Schools
- Staff employed at the Willows School
- The Governing Body of the Willows School
- All Schools in Rotherham
- Members of Parliament

- All Borough Councillors
- All Parish Councils
- RMBC Neighbourhoods Team for community engagement
- RMBC Communications Team for wider distribution
- RMBC SEND and Inclusion Services

4.4 There were no responses or comments submitted during the pre statutory consultation period. The summary consultation document is (Appendix 3) to this report. The proposal seeks to align the number of registered places at the school to reflect the actual capacity and, pupils are already on roll at the school. The absence of responses is reflective of the lack of impact this will have on existing pupils attending the Willows as their placements will not be affected. A further opportunity to comment will be available during the subsequent proposed statutory consultation period.

4.5 Following the pre-statutory period of consultation, this report seeks approval to commence a period of statutory consultation by the posting of a public notice.

4.6 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.

4.7 Following the period of statutory consultation on proposals, a further report should then be brought to Cabinet and as 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.

5. **Timetable and Accountability for Implementing this Decision**

5.1 **June 2021** - Reported to Cabinet seeking approval to commence a period of pre-statutory consultation on proposals.

29th June – 9th August 2021 - period of pre-statutory consultation completed.

October 2021 - Report to Cabinet outlining the outcome of pre-statutory consultation and seeking approval to commence a period of statutory consultation by the publication of a public notice.

October 2021 - Notification to the Department for Education and submission of proposals being consulted upon.

November 2021 - Public Notice period (4 weeks minimum) commences.

January 2022 - Report to Cabinet outlining the outcome of statutory

consultation and seeking a determination of the proposals.

January 2022 - Notification to the Secretary of State for Education of the determination of the proposals.

6. Financial and Procurement Advice and Implications

- 6.1 There are no procurement implications linked to this proposal.
- 6.2 The prescribed alteration will enable young people to continue to be placed locally and avoid the need to place with high cost out of area / independent providers in the future.

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 2013, to consult on the proposals set out in this report.
- 7.2 The DfE statutory guidance for proposers and decision makers - Making '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 (public notice) period, where a decision is not made within this time frame, the proposal must be referred to the Schools' Adjudicator for a decision.
- 7.3 The Education Act 1996 requires an English local authority to secure (as far as their powers enable them to do so) efficient 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.
- 7.4 The Equality Act 2010 imposes a public sector equality duty upon public (including local) authorities, (see section 10 below). The promotion of equality of opportunity includes the removal of a disadvantage suffered by persons with disability, or their carers. The 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 prescribed alterations if implemented would minimise that disadvantage.

8. Human Resources Advice and Implications

- 8.1 There are no human resource implications for the Local Authority to consider as the school is resourced to support the cohort.

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

- 9.1 Additional SEND places created within the borough give more children and young people the opportunity to access high quality provision closer to home to meet their educational needs and in line with parental wishes.

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 was undertaken on the proposed increase in SEND provision across the borough as reported to Cabinet on 19th February 2018. The assessment did not identify 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 has helped 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.
- 10.3 A further Equalities Impact Assessment (initial assessment) in relation to these proposals was undertaken prior to the report to Cabinet of 14th June 2021 being submitted. The assessment will be kept under review during the period of the prescribed alteration process and an initial full equalities impact assessment completed during the pre statutory consultation stage is (Appendix 1) to this report.
- 10.4 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.
- ## 11. **Implications for CO₂ Emissions and Climate Change**
- 11.1 An impact assessment has been undertaken linked to the proposals contained within this report is (Appendix 2).
- 11.2 In relation to the pupils already on roll and attending the school, there will be no changes to journeys although journey planning arrangements remain under constant review by the Corporate Transport Department aligned to Education, Health and Care Plans.

11.3 In relation to post 16 pupils in transition to other settings, an assessment is currently being completed by the Corporate Transport Department to evaluate journey variances, current arrangements and options to reduce impact aligned to transition arrangements.

12. Implications for Ward Priorities

12.1 The proposals will have a positive implication for ward priorities across the borough, as more children are able to continue to access specialist provision in line with their parents' wishes within Rotherham in future years.

13. Implications for Partners

13.1 This paper has been developed in partnership with colleagues from CYPS, R&E and Finance. An established SEND Project Board, with representation across Directorates and wider partners ensures the partnership continues to oversee SEND sufficiency projects and implications across all areas are considered and managed effectively. Education Partners will be fully involved with the development and implementation of plans where required and appropriate.

14. Risks and Mitigation

14.1. 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 within the borough and this trend is set to continue, meaning that more pupils would be placed in provision out of authority increasing the financial burden on the High Needs Block.

14.2 The proposals seek to amend the registered number of places at the school from 120 to 150 to ensure the school remains compliant with statutory requirements.

15. Accountable Officers

Dean Fenton, Head of Service - Access to Education

Approvals obtained on behalf of Statutory Officers:-

	Named Officer	Date
Chief Executive	Sharon Kemp	04/10/21
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	28/09/21
Head of Legal Services (Monitoring Officer)	Stuart Fletcher	30/09/21

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