

**Committee Name and Date of Committee Meeting**

Cabinet – 24 January 2022

**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 of Children and Young People's Services

**Report Author(s)**

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**Ward(s) Affected**

Borough-Wide

**Report Summary**

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 of the proposals.

**Recommendations**

1. That the proposal to make prescribed alterations to the Willows Special school by increasing the number of planned places from 120 to 150 be approved.
2. That the Secretary of State for Education be informed accordingly.

**List of Appendices Included**

Appendix 1 Equalities Impact Assessment (Initial screening)

Equalities Impact Assessment (Final Screening)

Appendix 2 Environmental Impact Assessment

## **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 19<sup>th</sup> 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 18<sup>th</sup> 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 14<sup>th</sup> June 2021.

Report to Cabinet seeking approval to commence a period of statutory consultation on proposals to make Prescribed Alterations to the Willows School on 18<sup>th</sup> October 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 This report follows previous reports to Cabinet on 14 June 2021 and 18 October 2021 respectively seeking approval to commence periods of pre statutory and statutory consultation on proposals to make prescribed alterations to the Willows Special School.
- 1.2 The previous reports outlined that the proposals fall within the requirements of the Department for Education (DfE) School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013.
- 1.3 Proposals were brought forward because the number of pupils in a special school on a permanent basis had increased by 10% or 20 pupils (whichever is the lowest) and this increase was expected to be in place for more than 2 years (as this is considered a permanent increase).
- 1.4 In relation to the above, the school is currently registered for 120 pupils and it is proposed to increase the number of registered places to 150 to align to the current number of pupils attending the school and the capacity on site.

### **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 Proceeding with option 1 would mean 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 14 June 2021, a period of pre-statutory consultation was undertaken with stakeholders between 29 June and 9 August 2021.

4.2 Following a second report to Cabinet on 18 October 2021, a period of statutory consultation was completed by the posting of a public notice outlining proposals and inviting representations. The notice period was from 12 November 2021 to 10 December 2021.

4.3 There is a strong expectation that Local Authorities will consult interested parties in developing proposals. This requirement was met by way of Pre statutory and statutory consultation periods as part of the duty under public law to act rationally and to take into account all relevant considerations.

4.4 As the Local Authority is the decision maker in relation to this proposal, it must make a decision within a period of two months of the end of the representation period (public notice). Where a decision is not made within this time frame, the proposal must be referred to the Schools' Adjudicator for a decision.

4.5 A public notice has been in place from 12 November to 10 December 2021. The public notice was placed in a local newspaper and displayed on the school website / a prominent place in school as required by the prescribed alterations regulations. Furthermore, the public notice was given by the school to parents, placed on the RMBC website, sent to all schools, Elected Members, Parish Council's and local Members of Parliament, shared with Rotherham Parent Partnership and RMBC Communications and Neighbourhoods Teams.

4.6 There were 2 representations received in response to the public notice. Responses were broadly supportive of the proposal with one representation acknowledging the proposals with no further comments and the other representation being supportive of the proposal to align the registered number of places to the number of children on roll at the school and the available capacity.

#### **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.

**29 June – 9 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.

**12 November – 10 December 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 (to be written by the relevant Head of Finance and the Head of Procurement on behalf of s151 Officer)**

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 (to be written by Legal Officer on behalf of Assistant Director Legal Services)**

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 Special Educational Needs and Disability (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 in relation to the proposals and is Appendix 1 to this report. 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 places on a permanent basis contributes to ensuring sufficient provision for the increasing numbers of children within Rotherham and ensures 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 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 and 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 any post 16 pupils in extended transition to other settings, an assessment is completed by the Corporate Transport Department to evaluate journey variances, current arrangements and options to reduce impact aligned to the transition arrangements.

## 12. Implications for Partners

- 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. Risks and Mitigation

- 13.1 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.
- 13.2 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.

## 14. Accountable Officers

Dean Fenton, Head of Service – Access to Education

Approvals obtained on behalf of Statutory Officers: -

	<b>Named Officer</b>	<b>Date</b>
Chief Executive	Sharon Kemp	07/01/22
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	23/12/21
Assistant Director, Legal Services (Monitoring Officer)	Phil Horsfield	22/12/21

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