



Office of
the Schools
Adjudicator

Determination

Case reference: STP642

Proposer: Wiltshire Council to discontinue St Nicholas, Rowdeford and Larkrise Schools and establish a new community special school.

Date of decision: 28 May 2020

Determination

Under the powers conferred on us by the Education and Inspections Act 2006 and the Regulations made thereunder, we have considered the proposals to discontinue St Nicholas, Rowdeford and Larkrise Schools on 31 August 2020 and to establish a new community special school on 1 September 2020. We hereby approve the proposals.

The proposals

1. On 31 January 2020 Wiltshire Council (the local authority) published a statutory notice to discontinue St Nicholas, Rowdeford and Larkrise Schools (the schools) on 31 August 2020 and establish a new community special school on 1 September 2020. St Nicholas School is in Chippenham, Rowdeford School is in Rowde and Larkrise School is in Trowbridge. It is proposed that the new school will operate on the sites currently occupied by all of the three schools.

Jurisdiction

2. The proposal to discontinue the schools was published under section 15 of the Education and Inspections Act 2006 (the Act). The proposal to establish a new community special school was made under section 10 of the Act. Permission to bring forward a proposal under section 10 was granted by the Secretary of State for Education on 27 June 2019.

3. Paragraph 10(1)(b)(i) of Part 2 of Schedule 2 to the Act requires that proposals made by a local authority under section 10 are referred to the adjudicator. Paragraph 15(a) of Part 2 of Schedule 2 requires that any related proposal, in this case those made under section

15 of the Act, are also referred to the adjudicator. Regulation 13(2) of The School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2013 (the Regulations) requires that any representations or comments received in relation to the proposals are sent to the adjudicator within two weeks of the end of the representation period.

4. The proposals were published on 31 January 2020. Regulation 13(1) of the Regulations sets the representation period for both section 10 and section 15 proposals as four weeks. The representation period should, therefore, have closed on 28 February 2020. However, because this period included the week of the half-term holiday the local authority allowed an additional week for representations and extended the representation period to five weeks ending on 6 March 2020. While this does not conform with regulations, we do not see that it causes disadvantage to any party. The representations and comments on the proposals were referred to the adjudicator on 9 March 2020 by the local authority, which is within the required period.

5. The Education (References to Adjudicators) Regulations 1999 make provision for the chief adjudicator to allocate a case to more than one adjudicator and to appoint one of them as lead adjudicator. Mr Peter Goringe and Mr Phil Whiffing have been appointed to this case with Mr Phil Whiffing as lead adjudicator. We are satisfied that we have jurisdiction for this case and agree this determination.

Procedure

6. In considering this matter we have had regard to all relevant legislation.

7. The documents we have considered in reaching our decision include:

- a) the statutory notice dated 31 January 2020;
- b) the representations received on the notice;
- c) information about public consultation undertaken prior to the publication of the notice; and
- d) the local authority's responses to our enquiries including a telephone conference on 15 May 2020.

Background

8. St Nicholas School is a community special school in Chippenham. In January 2020 it had 77 children on roll aged from 4 to 19. The school offers places for children with profound and multiple learning difficulties (PMLD), severe learning difficulties (SLD), autistic spectrum disorder (ASD) and physical disabilities (PD).

9. Larkrise School in Trowbridge is also a community special school. The roll in January 2020 was 99 children aged 4 to 18. The school offers places to children with the same range of difficulties as St Nicholas School.

10. Rowdeford School at Rowde near Devizes is also a community special school. It is the largest of the three schools with 163 children on roll aged 4 to 18. This school offers provision to children with moderate learning difficulties (MLD) as well as SLD, ASD and PD. It does not offer places for children with PMLD. All of the schools teach boys and girls.

11. The local authority has consulted extensively on the provision of special education in the north of the county and has concluded that by effectively 'amalgamating' the three schools there are educational and financial benefits.

Consideration of factors

Statutory process

12. The first stage of the statutory process required to establish and discontinue (close) schools is consultation. The requirements for consultation on the closure of special schools are set out in section 16(1) of the Act. After considering the papers prepared for the meeting of the local authority's cabinet on 22 May 2019, we are satisfied that these requirements were met.

13. The second stage of the statutory process is the publication of a notice setting out the proposals. The notice was published on 31 January 2020 on the local authority's website and in the local press as required by Parts 3 and 4 of the Regulations and the proposals contained the information required by Schedules 1 and 2 to the Regulations.

14. During the third stage 55 representations were received. These representations and the local authority's comments on them were sent to the Office of the Schools Adjudicator (OSA) within the two-week period set by Regulation 13(2). The statistical analysis of the responses provided by the local authority was accurate and helpful to our considerations. Overall, 60 per cent of the representations supported the proposals. Parents and carers of children attending the schools provided the largest proportion of representations at 37 per cent, with 80 per cent of these supporting the proposals.

15. The most recent statutory guidance from the Department for Education (DfE) on opening and closing schools was published in November 2019. This contains guidance for decision makers, including adjudicators, which we have had regard to.

Demand and Need

16. In January 2020 there was a total of 339 children on roll across the three schools. The proposal is for there to be 340 children on roll at the new school when it opens in September 2020. These will mainly be the same children attending the schools other than those joining and leaving as the school year changes.

17. Prior to the publication of these notices, the consultation sought views on proposals to expand the Rowdeford site in order to consolidate the three schools on that site and provide a centre which could be expanded further to meet growth in the need for special school places in Wiltshire and reduce the cost of out of county placements. Concerns about the possible closure of the sites currently occupied by Larkrise and St Nicholas Schools expressed during consultation led to the local authority limiting the current proposals to those set out above, which are closing three schools and establishing a new one across the existing sites for the same number of children.

18. Unfortunately, in August 2019 the local authority published statutory notices, since withdrawn, which were unclear about its intentions. This lack of clarity was compounded by cabinet papers in May 2019 and November 2019 which were worded in such a way as to imply that it was the local authority which was taking the decisions to close the three schools, open a new one and expand the new school to 400 places with over £30 million of capital investment. These papers also referred to the closure of sites. Many of the representations received on the proposals which we are considering reflect this confusion as they refer to matters consulted on, but not presented as part of these proposals now before us. For example: *“This proposal takes these children away from their locality. It removes them from sight and this is a huge backward step. The children in Chippenham can access amenities on their doorstep. They take part in the Chippenham Sports Partnership alongside mainstream schools. They are taken to school often by their parents and siblings as part of the normal school run. For many of these children the long journey to Rowdeford will add a great deal of stress and for some require additional medically trained staff to accompany them. This is a backward step and flies in the face of inclusion.”*

19. The scope of the current proposals was however clear to other objectors: *“The public response to the original proposal was clear and this revised proposal is clearly an intermediate phase to implementing the original plan to centralise on one site and close the other two disregarding the public opinion. I would support the proposal if it included commitment to invest in the other two sites and a legally binding statement for the long term operation of these two sites.”*

20. As set out above, legislation makes the adjudicator the decision maker on a proposal under section 10 of the Act to open a new community special school and because the closure of the schools is a related proposal, the adjudicator becomes the decision maker for that matter as well. The cabinet papers were misleading to suggest this was a power vested in the local authority. The cabinet papers were also misleading to suggest that the local authority had approved the expansion of the school or the closure of the sites.

21. The local authority could have proposed that the new school would offer 400 places in this proposal, but instead, proposed the new school would offer 340 places. Therefore, if at some future date it wanted to expand the school by at least 10 per cent or 20 pupils, this would form a prescribed alteration and statutory processes would be required. Following consultation and the publication of statutory notices, legislation makes the local authority the decision maker for such an expansion with the right of referral to the adjudicator resting

with either the Church of England or Roman Catholic dioceses. Similarly, any future closure of one or more sites is a prescribed alteration and must follow the same process.

22. We have considered whether the ‘amalgamation’ of the three schools is a necessary prerequisite to provide additional special school places. We have concluded that it is not; since it does not alter any physical or town planning constraints on the sites and after due process, theoretically any one of the sites could be expanded as an individual school within those constraints. Another alternative would be a completely new school on another site.

23. The other side of the previous point is, would the ‘amalgamation’ facilitate the provision of more places? We think it would because where three schools may compete for capital investment, a single school would be able to develop a strategic approach to the development of the three sites.

24. We note the concerns exemplified by the two representations quoted above. However, our decision is limited to the statutory proposals as set out in the notice which leaves the same number of children being educated across the same sites. We must consider these on their own merits.

Suitability

25. The statutory guidance to decision makers says: “*a proposal should demonstrate that, as part of a broad and balanced curriculum, the proposed new school would promote the spiritual, moral, cultural, mental and physical development of pupils at the school and of society*”. There is a clear statement in the proposals to this effect which is supported elsewhere in the proposals and in the earlier consultation on them.

Admission arrangements

26. The admission of children to the new school will be through their Education, Health and Care Plan (EHCP). It will be for the headteacher and governing board of the new school to decide which site best meets the requirements of the EHCP for each pupil.

Curriculum

27. The proposal for the new school states that “*The proposed new school will deliver a curriculum compliant with the general requirements of Section 78 of the Education Act 2002, enabling students to benefit from a broad and balanced curriculum which will allow them to develop their skills and knowledge, preparing them for life after school.*” The proposal describes how this will be tailored to the needs of individual students, including those with dual placements in mainstream schools, in line with their EHCP.

28. One of the arguments for the “amalgamation” is that it will bring together a wider range of curricular expertise. One of the representations said, “*I am also glad that the three-school site will be run by an executive headteacher and overseen by a single leadership team, that the expertise and resources of the three schools can be shared across sites*”.

29. We are of the view that while schools can collaborate in other ways to spread good practice, both in the classroom and in administration, this will be most effective with a single point of accountability, that is the governing board. An alternative approach might have been for the three schools to form a federation with a single governing board. However, in a federation each school remains a separate institution with separate budgets and inspections. As a single school established through statutory process, which is what is proposed, accountability is absolutely clear.

School size

30. Although the new school will have many more pupils than any of the three closing schools, these proposals make no change to the number of special school places offered or the number of places available any one of the sites. As noted above, any significant increase in numbers of places or closure of sites would be subject to separate statutory processes. An intended advantage of the “amalgamation” is the opportunity the larger school will have to streamline management and back office functions releasing resources for the more direct benefit of the pupils.

Equal opportunities

31. Disability is one of the protected characteristics set out in the Equality Act 2010. All of the children on roll at the existing three schools will have that characteristic. This proposal for the new school envisages all of these children continuing to go to school in the same place being educated in line with their EHCP. The proposal for the new school aims to enhance the education provided for these children.

32. Some of the children at the schools will have some of the other protected characteristics. We see nothing in these proposals that will detract from the way these children are educated or introduce new discrimination.

Integration and community cohesion

33. Among the representations made after the publication of the notice were several comments such as *“Pupils with special needs need to be recognised and educated in their local community. It would be a step backwards to place those pupils far away from their local communities. Community access and enabling youngsters to gain confidence/familiarity in their local community enables parents to access a wider variety of events and activities. Our youngsters do not transfer skills easily, they have complex needs and it isn't possible to access activities that are so far away as they require personal care due to their incontinence and clamping into minibuses. This all takes time and eats into the window of opportunity to explore learning outcomes in the community. If these pupils are placed at Rowde then their life opportunities will be severely reduced.”*

34. We reiterate that the proposals in front of us do not include the closure of any school sites. We, therefore, do not see any adverse impact arising from them in this respect.

Travel and accessibility

35. Again, the representations expressing concern with possible additional travel, such as that quoted under the previous heading, are predicated on the closure of sites which is not part of the proposal in front of us. There may be situations where the head and governing board of the new school consider that a child would benefit from being educated on a site farther from their home. If that were to be the case, we would expect such a decision to be a result of weighing the benefit to the child against any additional impact from additional travel. Other than such situations, we see no significant impact of these proposals on children's journeys to school.

Funding

36. As referred to above, these proposals emerged from discussion and consultation about long-term provision for children with special needs in Wiltshire. The demand for special school places in the County exceeds the supply and is growing. This has led to an increasing number of children being placed at independent special schools at an average annual cost of £50,000 per year compared to £20,000 for a place in a maintained or academy special school. As a consequence, there is projected overspend of £6.429 million in the 2019/20 financial year on special education (System of Excellence and New School Business Case, Wiltshire County Council, December 2019).

37. The strategy to address this overspend is based on increasing, over time, the number of places in the new school. However, the proposals we are considering do not increase the number of places available on the date they are proposed to be implemented, that is, 1 September 2020. Generally speaking, mainstream schools are funded with a lump sum and a sum based on the number of pupils and their characteristics. Therefore, one school will normally receive less money than three schools for the same number of pupils, leading to 'savings' in the Dedicated Schools Grant. However, special schools are mainly funded according to the number of places they have with no lump sums, so the cost to the local authority's high needs funding block of 340 pupils is the same whether those children are taught in three schools or one school. After some questioning, the local authority confirmed that these proposals will not of themselves help address the county wide overspend on special education because they do not increase the number of places.

38. The proposals refer to a collective in-year deficit across the three schools rising to "over £1m by the end of 2021-22". It has not been explained to us why the existing schools cannot operate within their separate budgets, but they do not, and it has not been possible for the governing boards or the local authority to suggest how they might. The local authority claimed that the proposals would address this deficit. While on the face of it we could see scope to reduce leadership, back office and procurement costs, we sought further detail from the local authority on how one school could operate within a combined budget whereas three schools could not operate within individual budgets totalling the same amount. We were not initially satisfied with the financial modelling provided by the local authority as it appeared to continue to include an expectation of growth in pupil and place numbers and we could not understand the derivation of some figures within the model.

39. After further discussion with the local authority a model was produced which was based on headings used by the DfE for schools financial benchmarking and published on the DfE website. This allows comparison of the spending in the schools against similar schools under various budget headings such as staff, premises, and supplies. This modelling shows where the existing schools are spending more than comparator schools and that the governing board of the new school would be expected to be able to operate the new school within the allocated funding by making significant savings while, in fact, focusing rather more of its budget on teaching costs.

40. While there are no capital costs associated with these proposals, there will be revenue costs, for example, any redundancy costs. The local authority has said that it will meet these costs.

Nursery and early years

41. There were some representations concerning early years provision. However, there is currently no early years provision in the three schools and there are no proposals for the new school to include it. Early years provision is provided in local centres which are not affected by these proposals.

Denominational provision

42. The three existing schools are community schools and so do not have a religious character. The new school is also proposed to be a community school and so it will not have religious character either.

Community services

43. With the new school continuing to operate across all three sites, there is no reason why any services to the local communities currently provided from them should not continue.

Other considerations

44. These proposals were published on 31 January 2020 and were received at the OSA on 9 March 2020. During our consideration of these proposals restrictions on work and travel were introduced because of COVID-19. This may explain delays in the local authority responding to our enquiries on funding; these have in turn delayed this determination. We are also concerned that continuing COVID-19 restrictions will hamper the implementation of the proposals by the proposed dates of 31 August and 1 September 2020.

45. If we approve the proposals as published, the local authority would be under a duty to implement them by the published dates and if it could not do so, it would need to request a modification to the proposals from the adjudicator. We, therefore, discussed with the local authority the possibility of using our power to modify the date of implementation in this determination. The local authority believes that it can implement these proposals by the published dates saying that there is full engagement from the three schools to keep to

programme. We have consequently decided not to modify the dates of implementation in this determination.

Conclusion

46. These proposals have emerged from a long process developing a strategy to manage the costs of special school places in Wiltshire. In the representations on these proposals we have detected confusion over their scope. Representations against the proposals focussed on the closure of sites which are not part of them. The closure of any site would require further statutory process, as would any expansion of the new school. The majority of representations supported the proposals, particularly those from parents of children at the schools.

47. We have considered the matters set out in the statutory guidance for decision makers on opening and closing schools. We find nothing which would be necessarily detrimental to children at the schools. We see opportunities for the proposed new school to prioritise more of the same funding which would have been available to the three schools on teaching, by streamlining management, back office and other support functions. We are also satisfied that the new school could spread good practice across the sites more effectively as a single school.

48. Having considered the factors above we approve the proposals.

Determination

49. Under the powers conferred on us by the Education and Inspections Act 2006 and the Regulations made thereunder, we have considered the proposals to discontinue St Nicholas, Rowdeford and Larkrise Schools on 31 August 2020 and to establish a new community special school on 1 September 2020. We hereby approve the proposals.

Dated: 28 May 2020

Signed: Phil Whiffing and Peter Goringe

Schools Adjudicators