

	<b>Cabinet</b> 19 <sup>th</sup> July 2021
	<b>Report from the Strategic Director, Children and Young People</b>
<b>Phoenix Arch School: Change of Special Educational Need Designation and Categories of Need; Change in Published Admission Numbers (PAN)</b>	

<b>Wards Affected:</b>	All
<b>Key or Non-Key Decision:</b>	Key
<b>Open or Part/Fully Exempt:</b> (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
<b>No. of Appendices:</b>	One Appendix A 'Making significant changes ('prescribed alterations') to maintained schools, October 2018' <a href="https://www.gov.uk/government/publications/school-organisation-maintained-schools">https://www.gov.uk/government/publications/school-organisation-maintained-schools</a>
<b>Background Papers:</b>	None
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## 1.0 Purpose of the Report

1.1 This report provides Cabinet with a summary of

- The proposal to amend the special school designation of Phoenix Arch School from a designation of Autistic Spectrum Disorder (ASD) and Social, Emotional and Mental Health (SEMH) to ASD only;
- The proposal to increase the Published Admission Number (PAN) within the school from 55 to a maximum of 68.

## 2.0 Recommendation

That Cabinet:

- 2.1 Reviews and approves the proposal to amend the designation of Phoenix Arch Special School from a designation of ASD and SEMH to ASD only.
- 2.2 Reviews and approves the proposal to increase the PAN within the school from 55 to a maximum of 68, subject to the school gaining planning permission for an expansion of the existing school building.

### **3.0 Detail**

- 3.1 Phoenix Arch School is a Community Primary Special School located on Drury Way, NW10 in the south of the borough, within the Stonebridge ward.
- 3.2 Phoenix Arch Special School is a Community Primary Special School for pupils aged 4-11 years, judged as 'good' by Ofsted in 2018. The School is the only Community Special School in Brent. The designated SEN provision of the school is currently classified as Autistic Spectrum Disorder (ASD) and Social, Emotional and Mental Health (SEMH). The school was initially designated as a school for pupils with Social, Emotional and Behavioural Difficulties (SEBD), but a re-designation was agreed in 2012 to include ASD provision and update SEBD to the newer classification of SEMH.
- 3.3 Demand for places for ASD pupils is high and the last cohort of SEMH pupils left the school in September 2016. The school caters for pupils on the autistic spectrum and with related communication difficulties. The school leadership team have developed the site to provide specialist provision to support children with ASD, including sensory and therapy rooms. This has enabled the school to offer 55 planned admission places for pupils with high functioning ASD with seven classes containing between seven to nine pupils, depending on the needs of the children. The school has further developed teaching and learning strategies so that all children on roll are able to access the national curriculum when adapted to meet their needs. The whole school curriculum takes into account the specific learning difficulties of the pupils and their individual learning styles within a language rich environment.
- 3.4 The School Place Planning Strategy 2019-2023 Refresh November 2020, agreed by Cabinet in November 2020, sets out the increasing demand for Special Educational Need provision for children with ASD within the borough. The strategy noted that the January 2020 SEN 2 return identified 27% of children and young people with an Education, Health and Care plan had a primary need of ASD. The January 2021 SEN 2 returned noted 2807 children with an Education, Health and Care plan in Brent, with 40% of children and young people with a primary need of ASD being at primary level. Due to the increasing numbers of children with an Education, Health and Care plan there is an insufficiency of school places in Brent and school places are being sought in neighbouring authorities. There are currently 530 children with an Education, Health and Care plan educated in out of borough schools.
- 3.5 In response to this need the School Governing Board, Headteacher and Children and Young People's Department have worked together to explore how the school could meet this increasing need for children who can access the curriculum but require a special school setting to fully thrive. It is proposed that Phoenix Arch Special School increase its pupil intake from the official PAN of 55 to a maximum of 68 pupils, beginning in the Reception cohort in September

2022/23 academic year. The higher intake of pupils would be admitted each year until the school reaches a new capacity by the 2025/6 academic year. As the school is currently at capacity, this increase in PAN would be based on the school gaining planning consent for the expansion of the existing school building in accordance with DfE area guidelines set out in 'Area Guidelines for SEND and Alternative Provision' 2015. This document describes non-statutory area guidelines for buildings and provides guidance on grounds for ages 3 to 19 at the following educational settings: special schools, alternative provision (AP) and Additionally Resourced Provision (ARP). Given current pressure on SEND places, as described above, increasing the PAN to the maximum available within the proposed enhanced space helps in meeting the Council's strategic aims in this area.

#### **4.0 Formal Consultation**

- 4.1 Formal consultation to change the designation and increase the intake of Phoenix Arch School is required under the statutory process for making 'prescribed alterations' to maintained schools (Appendix A Statutory Guidance for Proposers and Decision-makers, Department for Education, October 2018).
- 4.2 The statutory consultation process has four stages - Stage 1: Publication of a Statutory Proposal, Stage 2: Representation (formal consultation for a period of 4 weeks), Stage 3: Decision and Stage 4: Implementation. Following the formal representation period, Cabinet is required to make a decision on a proposal within two months.
- 4.3 On 24 September 2020, the Governing Board at Phoenix Arch Special School launched an informal consultation proposing the removal of the SEMH designation and for the school to be designated solely as an ASD provision. This would involve the admission criteria of the school to be amended to remove SEMH. This informal consultation has been followed by a formal consultation, which took place between May 14<sup>th</sup> and June 14<sup>th</sup> 2021 for both the change in designation and a proposed increase in the PAN, subject to gaining planning consent for an expansion of the school building. The statutory consultation was published on the Council website and copies were also sent to the Governing Board of the school and the parents of every registered pupil at the school. The Governing Board discussed the proposal in September 2020 and June 2021. On both occasions the Governing Board approved the proposal to change designation and increase the PAN.
- 4.4 Summary of responses to informal consultation on the change of designation which ended on 23 October 2020:
  - There were 26 responses: 22 were in favour (84%) with 4 responses against removing SEMH from its designation.
  - 15 specific comments identified how the focus on ASD would support expert staff in this area, a curriculum that is directly linked to additional learning needs and styles and a clear remit for the school.
  - The final consultation question asked respondents to raise any questions they might have. Two respondents asked where the children with SEMH attending the school would go. The consultation document makes clear that there are no children at Phoenix Arch with SEMH.
- 4.5 Summary responses to the formal consultation that ended on 14<sup>th</sup> June 2021 for both the change of designation and increase in PAN:

- There were 12 responses to the consultation.
- All 12 responses agreed with the proposal to change the designation to only ASD.
- 67% agreed to the expansion of PAN. 33% opposed the expansion,
- Two respondents caveated a 'no' response to the expansion with the statement that an increase in PAN should be subject to planning consent. The statutory proposal makes it clear that the increase in PAN would be subject to the school gaining planning consent.

4.6 The milestone dates following a decision by Cabinet to approve the formal consultation to alter the designation of Phoenix Arch School are set out in the timetable below:

**Table 2: Project milestones**

Date	Action
14 <sup>th</sup> May 2021	Publication of statutory proposal notice and formal consultation
14 <sup>th</sup> June 2021	Formal consultation closes
19 <sup>th</sup> July 2021	Cabinet decision
August 4 <sup>th</sup> 2021	Notification of new designation to the DfE
October 2021	Cabinet paper proposing the capital plan for SEND provision

## 5.0 Financial Implications

5.1 Should the school expansion proposal be approved, the school will require additional accommodation to meet this increase in pupil numbers. At the time of drafting this report, a feasibility study is being produced to identify build options and proposed costs. The final proposal will form part of the SEND Capital Plan that will be submitted for Cabinet approval in October 2021. It is expected any building project will be funded via the Council's Capital Programme.

5.2 This proposed expansion would support the Council's Dedicated Schools Grant (DSG) deficit recovery management plan following pressures on the High Needs Block due to significant growth in the number of children with Education, Health and Care Plans (EHCP) by allowing for a local option for children with SEND thereby reducing the requirement for high cost independent sector placement out of borough. However, as the proposed increase in the maximum number of pupils is 13, a cost analysis will be undertaken to consider the proposal in the light of the wider proposed expansion in numbers before the final submission to Cabinet.

## 6.0 Legal Implications

6.1 The Council has a statutory duty under section 14 Education Act 1996 to ensure that there are sufficient school places available to meet the needs of the population in its area. The Council as decision maker should consider the quality and diversity of schools in the relevant area and whether the proposal will meet or affect the needs of parents, raise local standards and narrow attainment gaps.

- 6.2 The School Admissions Code does not apply to special schools. In the case of community special schools, the Local Authority may seek to increase the number of places by following the statutory process in instances, such as this one, where the proposed increase is by either 10% or 20 pupils (whichever is the smaller number). Both the Local Authority and the Governing Body may propose the increase and the decision maker is the Local Authority.
- 6.3 For community special schools, the Local Authority and / or the Governing Body can propose a change to the designation and categories of SEN provision and the decision maker is the Local Authority. The process which must be followed is again the statutory process.
- 6.4 When proposing changes, Local Authorities and Governing Bodies should act reasonably and in line with the principles of public law, to ensure that the changes do not have a negative impact on the education of pupils in the area.
- 6.5 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. Paragraphs 4.3 and 4.4 above confirm that this additional step was undertaken. The statutory process for making the prescribed alterations is as referred to in the body of this report, namely:
- Stage 1 – publication of the statutory proposal
  - Stage 2 – Representation via formal consultation (must be 4 weeks)
  - Stage 3 – the Local Authority must decide a proposal within 2 months
  - Stage 4 – implementation.
- 6.6 The Council, as decision maker, will need to be satisfied that the appropriate fair and open local consultation and/ or representation period has been carried out and that the proposer has given full consideration to all the responses received. The Council may, as decision maker reject the proposal / approve the proposal without modification, or with modification having consulted / or approve the proposal with or without modification, subject to certain conditions, such as, in this case, the granting of necessary planning permission.
- 6.7 Within one week of making a decision, the Council must publish its decision and the reasons for it on the website where the original proposal was published and send copies to:
- The Schools Adjudicator
  - The Governing Body / proposers (as appropriate)
  - Trustees of the school (if any)
  - The local Church of England and Roman Catholic dioceses
  - The parents of registered pupil at the school – where the school is a special school
  - Any other body that they think is appropriate.
- 6.8 The statutory guidance from the DfE in relation to this area is attached as appendix 1, ‘Making significant changes (‘prescribed alterations’) to maintained schools, October 2018’. The Council must have regard to the statutory guidance when exercising functions in relation to the making of prescribed alterations to maintained schools.

## **7.0 Equality Implications**

- 7.1 The Public Sector Equality Duty under section 149 of the Equality Act 2010 requires the Local Authority when exercising its functions to have due regard to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act, to advance equality of opportunity and foster good relations between those who have a protected characteristic and those who do not share that protected characteristic. The protected characteristics covered under the Act are age, disability, gender reassignment, marriage and civil partnership (only in respect of eliminating unlawful discrimination) pregnancy and maternity, race (this includes ethnic or national origins, colour or nationality) religion or belief (this includes lack of belief) sex and sexual orientation. Due regard means giving relevant and proportionate consideration to the duty, in that whenever significant decisions are being made consideration must be given to the impact/affect that implementing a particular decision will have in relation to equality before making that decision. Brent Council also has a policy of considering Human Rights and socio-economic impact.
- 7.2 It is not anticipated that there will be any negative impact from these proposals on the basis of disability, gender reassignment, marriage and civil partnership (only in respect of eliminating unlawful discrimination) pregnancy and maternity, race (this includes ethnic or national origins, colour or nationality) religion or belief (this includes lack of belief) sex and sexual orientation.

## **8.0 Consultation with Ward Members and Stakeholders**

- 8.1 The Lead Member for Children's Safeguarding, Early Help and Social Care and the Lead Member for Schools, Employment and Skills have been consulted as part of the drafting of this report.
- 8.2 Ward members will be advised as part of the planning consultation process and will remain engaged as the consultation and any follow up actions progress.

## **9.0 Human Resources Implications**

- 9.1 The school governing board will be responsible for recruiting appropriate staff for the expansion programme. As a community school the monitoring of school effectiveness will be undertaken by Children and Young People's Department as part of the Local Authority duty.

## **10.0 Property Implications**

- 10.1 The Education Act 1996 places a duty on the Secretary of State to prescribe standards for the premises of all maintained schools in England and Wales. Those for England are set out in The School Premises (England) Regulations 2012 (SPRs) and they apply to all existing and new schools maintained by a local authority.
- 10.2 The school is currently operating at full capacity and will require additional accommodation to meet the proposed expansion in PAN and to be compliant with the regulations set out in 10.1 above. At the time of drafting this report, a feasibility study is being completed by the Regeneration and Environment Department to identify costed building proposals to provide the required

accommodation. The feasibility study will include three options. The proposals will be discussed with the Phoenix Arch Special School Governing Board to ensure the proposal being put before Cabinet for approval in autumn 2021 will meet the required building standards with a cost benefit analysis.

- 10.3 Any required capital project will need to be approved via the Council's Capital Project Governance Process.

Related Documents

School Place Planning Strategy 2019-2023 Refresh, November 2020

**Report sign off:**

**Gail Tolley**

Strategic Director, Children and  
Young People