

DELEGATED DECISION

BY THE PORTFOLIO HOLDER FOR BUSINESS, EDUCATION AND SKILLS

Approval to publish formal Statutory Notice – proposal to expand Middleton Primary from 420 to 630 places

Legal observations

The school organisation regime is set out in the Education and Inspections Act 2006 (“EIA”), regulations made under the EIA and guidance made by the Secretary of State, both statutory (using powers in the EIA) and non-statutory.

Under section 19 of the EIA, a local authority is required to publish a proposal to make a prescribed alteration to a maintained school. In essence, a prescribed alteration is one designated as such by regulations. Currently, the relevant regulations are the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 (“the Prescribed Alterations Regulations 2013”).

The proposal referred to in this delegated decision form to expand Middleton Primary & Nursery School (“Middleton”) from 420 to 630 places (which was the subject of initial consultation from 24 April 2017 to 19 May 2017), would be a prescribed alteration because it entails an enlargement of the premises of Middleton, which would increase the capacity of Middleton by more than 30 pupils and by well over the threshold of 25 per cent or 200 pupils (whichever is the lesser) (regulation 5 of and paragraph 1 of Schedule 2 to the Prescribed Alterations Regulations 2013).

Whilst the school organisation regime no longer has a ‘pre-publication’ consultation period, in public law terms such consultation is advisable. Indeed, this is reflected in the current statutory guidance entitled *Making ‘prescribed alterations’ to maintained schools* (April 2016) which states at page 25: *“Although there is no longer a statutory ‘pre-publication’ consultation period for prescribed alteration changes, there is a strong expectation that schools and LAs 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...”* Therefore, it is advisable that the proposal referred to in this delegated decision form is consulted upon before being published. This consultation took place from 24 April 2017 to 19 May 2017 with more parent/carers and Middleton staff/governor respondents in support of the proposal than objecting.

Therefore, this proposal is ready for publication if it is to be taken forwards, with a four week representation period for objections or comments. Whilst the report for this decision refers to a proposed date of completion for the proposed enlargement of Middleton as September 2018, it is advisable if this proposal is to be taken forwards past the informal consultation stage that, if possible, a clearer implementation date is identified. This is because the publication stage of the school organisation regime requires a proposer to state when the proposal would be implemented.

Lastly, it is advisable that Human Resources (“HR”) and legal advice is taken in relation to the HR, employment law and commercial law ramifications of the proposals here.

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