

**GOVERNING BODY PROPOSAL TO INCREASE THE UPPER AGE LIMIT  
TO ESTABLISH A SIXTH FORM AT HOUGHTON KEPIER SPORTS  
COLLEGE**

**Report of the Chief Solicitor**

**1. Purpose of the Report**

- 1.1 To consider a statutory proposal published by the Governing Body of Houghton Kepier Sports College to increase the upper age limit of the school in order to establish a sixth form.

**2. Description of Decision**

- 2.1 That the Committee consider the above proposal. Under the provisions of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007, as amended, (the 2007 Regulations) the Authority can either reject the proposal or approve the proposal with or without modification.

**3. Introduction and Background**

- 3.1 Under the provisions of the Education and Inspections Act 2006 and the 2007 Regulations, the governing body of a foundation school may publish proposals for certain alterations to be made to the school, one of which is an alteration to the upper age limit of the school.
- 3.2 The Authority has received a proposal by the Governing Body of Houghton Kepier Sports College, a Trust School. The proposal is to increase the upper age limit of the school from 16 years to 19 years to provide a sixth form. The proposed capacity of the sixth form is 200 pupils. The proposed implementation date is 1 September 2010.
- 3.3 The statutory notice is attached at Appendix 1 and the full proposal is attached at Appendix 2.
- 3.4 The notice was published on 11 September 2009, with the four week representation period expiring on 9 October 2009.
- 3.5 Ten objections and three letters in support were received in response to the statutory notice and are attached at Appendix 3. The details are as follows:-

In support:

1. Pauline Carlton;
2. Mrs. A. Graham;
3. Julie Markham;

In opposition:

1. Angela O'Donoghue, Principal – City of Sunderland College;
2. Mr. S. Haigh, Headteacher – Hetton School Technology College;
3. Mr. D. Thornton, Headteacher – Farringdon Community Sports College;
4. Cllr P. Gibson on behalf of the Governing Body – Farringdon Community Sports College;
5. Mr. R. Bain, Headteacher – Sandhill View School;
6. Dr. P. Ingram, Headteacher – Southmoor Community School;
7. Mr. J. Hallworth, Headteacher – Thornhill School Business and Enterprise College;
8. Pauline Piddington, Partnership Director – Learning and Skills Council (Received 12/10/09 and included for completeness - at the Committee's discretion whether it is taken into account);
9. Dr. H. Paterson, Executive Director of Children's Services – Sunderland City Council;
10. Lynda Brown, Head of Standards – Sunderland City Council – Chair of 14-19 Partnership.

#### 4. **Consultation**

- 4.1 The 2007 Regulations provide that those bringing forward statutory proposals to make a school alteration must consult prescribed, interested parties and must also have regard to the Secretary of State's guidance.
- 4.2 The Secretary of State's guidance states that when consulting interested parties, proposers should:-
  - i) allow adequate time;

- ii) provide sufficient information for those being consulted to form a considered view;
- iii) make clear how consultees' views can be made known;
- iv) be able to demonstrate how they have taken into account the views expressed during the consultation when reaching a decision to publish proposals.

4.3 Details of the consultation undertaken by the School are set out in Appendix 2, in Section 9 of the proposal document. Appendices A and B to the proposal document set out the consultation material and accompanying feasibility report. Appendix C sets out the consultation feedback.

## 5. **Relevant Extracts from DCSF Decision Makers' Guidance**

5.1 Regulation 8 of the 2007 Regulations provides that the Authority must have regard to guidance issued by the Secretary of State when making decisions on statutory proposals. The relevant parts of the current Guidance are set out here:-

### **Relevant Extracts**

- The following factors should not be taken to be exhaustive. Their importance will vary, depending on the type and circumstances of the proposals. All proposals should be considered on their individual merits.

## **EFFECT ON STANDARDS AND SCHOOL IMPROVEMENT**

### **A System Shaped by Parents**

- The Government's aim, as set out in the Five Year Strategy for Education and Learners and the Schools White Paper *Higher Standards, Better Schools For All*, is to create a schools system shaped by parents which delivers excellence and equity. In particular, the Government wishes to see a dynamic system in which:-

weak schools that need to be closed are closed quickly and replaced by new ones where necessary;

the best schools are able to expand and spread their ethos and success; and

new providers have the opportunity to share their energy and talents by establishing new schools – whether as

voluntary schools, Trust schools or Academies – and forming Trusts for existing schools.

- The IEA 2006 amends the Education Act 1996 to place new duties on Local Authorities (LAs) to secure diversity in the provision of schools and to increase opportunities for parental choice when planning the provision of schools in their areas. In addition, LAs are under a specific duty to respond to representations from parents about the provision of schools, including requests to establish new schools or make changes to existing schools. The Government's aim is to secure a more diverse and dynamic schools system which is shaped by parents. The Decision Maker should take into account the extent to which the proposals are consistent with the new duties on LAs.

### **Standards**

- The Government wishes to encourage changes to local school provision where it will boost standards and opportunities for young people, whilst matching school place supply as closely as possible to pupils' and parents' needs and wishes.
- Decision Makers should be satisfied that proposals for a school expansion will contribute to raising local standards of provision and will lead to improved attainment for children and young people. They should pay particular attention to the effects on groups that tend to under-perform, including children from certain ethnic groups, children from deprived backgrounds and children in care, with the aim of narrowing attainment gaps.

### **Diversity**

- The Government's aim is to transform our school system so that every child receives an excellent education – whatever their background and wherever they live. A vital part of the Government's vision is to create a more diverse school system offering excellence and choice, where each school has a strong ethos and sense of mission and acts as a centre of excellence or specialist provision.
- Decision Makers should consider how proposals will contribute to local diversity. They should consider the range of schools in the relevant area of the LA and whether the expansion of the school will meet the aspirations of parents, help raise local standards and narrow attainment gaps.

## **Every Child Matters**

- The Decision Maker should consider how proposals will help every child and young person achieve their potential in accordance with Every Child Matters' principles which are: to be healthy; stay safe; enjoy and achieve; make a positive contribution to the community and society; and achieve economic well-being. This should include considering how the school will provide a wide range of extended services, opportunities for personal development, access to academic and applied learning training, measures to address barriers to participation and support for children and young people with particular needs, e.g. looked after children or children with special educational needs (SEN) and disabilities.

## **SCHOOL CHARACTERISTICS**

### **Equal Opportunity Issues**

- The Decision Maker should consider whether there are any sex, race or disability discrimination issues that arise from the changes being proposed, for example that there is equal access to single sex provision for the other sex to meet parental demand. Similarly there needs to be a commitment to provide access to a range of opportunities which reflect the ethnic and cultural mix of the area, while ensuring that such opportunities are open to all.

## **NEED FOR PLACES**

### **Creating Additional Places**

- In considering proposals, the Decision Maker should consider the supporting evidence presented for the increase, and take into account the existence of spare capacity in neighbouring schools, but also the quality and popularity with parents of the schools in which spare capacity exists and evidence of parents' aspirations for places in the school proposed for expansion. The existence of surplus capacity in neighbouring less popular or successful schools should not in itself prevent the addition of new places.
- Where the school has a religious character, or follows a particular philosophy, the Decision Maker should be satisfied that there is satisfactory evidence of sufficient demand for places for the school to be sustainable.
- Where proposals will add to surplus capacity but there is a strong case for approval on parental preference and standards grounds, the presumption should be for approval. The LA in

these cases will need to consider parallel action to remove the surplus capacity thereby created.

### **Travel and Accessibility for All**

- In considering proposals for the reorganisation of schools, Decision Makers should satisfy themselves that accessibility planning has been properly taken into account. Facilities are to be accessible by those concerned, by being located close to those who will use them, and the proposed changes should not adversely impact on disadvantaged groups.
- In deciding statutory proposals, the Decision Maker should bear in mind that proposals should not have the effect of unreasonably extending journey times or increasing transport costs, or result in too many children being prevented from travelling sustainably due to unsuitable routes e.g. for walking, cycling etc. The EIA 2006 provides extended free transport rights for low income groups. Proposals should also be considered on the basis of how they will support and contribute to the LA's duty to promote the use of sustainable travel and transport to school.

### **16-19 Provision**

The pattern of 16-19 provision differs across the country. Many different configurations of school and college provision deliver effective 14-19 education and training. An effective 14-19 organisation has a number of key features:

- standards and quality: the provision available should be of a high standard – as demonstrated by high levels of achievement and good completion rates;
- progression: there should be good progression routes for all learners in the area, so that every young person has a choice of the full range of options within the 14-19 entitlement, with institutions collaborating as necessary to make this offer. All routes should make provision for the pastoral, management and learning needs of the 14-19 age group;
- participation: there are high levels of participation in the local area; and,
- learner satisfaction: young people consider that there is provision for their varied needs, aspirations and aptitudes in a range of settings across the area.

Where standards and participation rates are variable, or where there is little choice, meaning that opportunity at 16 relies on where a young person went to school, the case for reorganisation, or allowing high quality providers to expand, is strong.

Where standards and participation rates are consistently high, collaboration is strong and learners express satisfaction that they have sufficient choice, the case for a different pattern of provision is less strong. The Decision Maker therefore will need to take account of the pattern of 16-19 provision in the area and the implications of approving new provision.

## **FUNDING AND LAND**

### **Capital**

- The Decision Maker should be satisfied that any capital required to implement the proposals will be available. Normally, this will be some form of written confirmation from the source of funding on which the promoters rely (e.g. the LA, DCSF or LSC). In the case of an LA, this should be from an authorised person within the LA, and provide detailed information on the funding, provision of land and premises etc.
- There can be no assumption that the approval of proposals will trigger the release of capital funds from the Department, unless the Department has previously confirmed in writing that such resources will be available; nor can any allocation 'in principle' be increased. In such circumstances the proposals should be rejected, or consideration of them deferred until it is clear that the capital necessary to implement the proposals will be provided.
- Proposals should not be approved conditionally upon funding being made available, subject to the following specific exceptions: For proposals being funded under the Private Finance Initiative (PFI) or through the BSF programme, the Decision Maker should be satisfied that funding has been agreed "in principle", but the proposals should be approved conditionally on the entering into of the necessary agreements and the release of funding. A conditional approval will protect proposers so that they are not under a statutory duty to implement the proposals until the relevant contracts have been signed and/or funding is finally released.

## **SPECIAL EDUCATIONAL NEEDS (SEN) PROVISION**

### **Initial Considerations**

When reviewing SEN provision, planning or commissioning alternative types of SEN provision or considering proposals for change LAs should aim for a flexible range of provision and support that can respond to the special educational needs of individual pupils and parental preferences, rather than necessarily establishing broad categories of provision according to special educational need or disability. There are a number of initial considerations for LAs to take account of in relation to proposals for change. They should ensure that local proposals:

- i. take account of parental preferences for particular styles of provision or education settings; offer a range of provision to respond to the needs of individual children and young people, taking account of collaborative arrangements (including between special and mainstream), extended school and Children's Centre provision; regional centres (of expertise ) and regional and sub-regional provision; out of LA day and residential special provision;
- ii. are consistent with the LA's Children and Young People's Plan;
- iii. take full account of educational considerations, in particular the need to ensure a broad and balanced curriculum, including the National Curriculum, within a learning environment in which children can be healthy and stay safe;
- iv. support the LA's strategy for making schools and settings more accessible to disabled children and young people and their scheme for promoting equality of opportunity for disabled people;
- v. provide access to appropriately trained staff and access to specialist support and advice, so that individual pupils can have the fullest possible opportunities to make progress in their learning and participate in their school and community;
- vi. ensure appropriate provision for 14-19 year-olds, taking account of the role of local LSC funded institutions and their admissions policies; and

Taking account of the considerations, as set out above, will provide assurance to local communities, children and parents that any reorganisation of SEN provision in their area is designed to improve on existing arrangements and enable all children to achieve the five Every Child Matters outcomes.



## **The Special Educational Needs Improvement Test**

When considering any reorganisation of SEN provision, including that which might lead to some children being displaced through closures or alterations, LAs, and all other proposers for new schools or new provision, will need to demonstrate to parents, the local community and Decision Makers how the proposed alternative arrangements are likely to lead to improvements in the standard, quality and/or range of educational provision for children with special educational needs. All consultation documents and reorganisation plans that LAs publish and all relevant documentation LAs and other proposers submit to Decision Makers should show how the key factors set out below have been taken into account. Proposals which do not credibly meet these requirements should not be approved and Decision Makers should take proper account of parental or independent representations which question the LA's own assessment in this regard.

### **Key Factors**

When LAs are planning changes to their existing SEN provision, and in order to meet the requirement to demonstrate likely improvements in provision, they should:

- identify the details of the specific educational benefits that will flow from the proposals in terms of:
  - a) improved access to education and associated services including the curriculum, wider school activities, facilities and equipment, with reference to the LA's Accessibility Strategy;
  - b) improved access to specialist staff, both education and other professionals, including any external support and/or outreach services;
  - c) improved access to suitable accommodation; and
  - d) improved supply of suitable places.

The requirement to demonstrate improvements and identify the specific educational benefits that flow from proposals for new or altered provision as set out in the key factors are for all those who bring forward proposals for new special schools or for special provision in mainstream schools including governors of foundation schools and foundation special schools. The proposer needs to consider all the factors listed above.

Decision Makers will need to be satisfied that the evidence with which they are provided shows that LAs and/or other proposers have taken account of the initial considerations and all the key factors in their planning and commissioning in order to meet the requirement to

demonstrate that the reorganisation or new provision is likely to result in improvements to SEN provision.

## **OTHER ISSUES**

### **Views of Interested Parties**

- The Decision Maker should consider the views of all those affected by the proposals or who have an interest in them including: pupils; families of pupils; staff; other schools and colleges; local residents; diocesan bodies and other providers; LAs; the LSC (where proposals affect 14-19 provision) and the Early Years Development and Childcare Partnership if one exists, or any local partnership or group that exists in place of an EYDCP (where proposals affect early years and/or childcare provision). This includes statutory objections and comments submitted during the representation period. The Decision Maker should not simply take account of the numbers of people expressing a particular view when considering representations made on proposals. Instead the Decision Maker should give the greatest weight to representations from those stakeholders likely to be most directly affected by the proposals.

## **6. Amendment to Regulations**

- 6.1 In addition to the above Guidance, the 2007 Regulations were further amended with effect from 1<sup>st</sup> September, 2009. In particular the section of the Regulations which sets out the detail required to be included in the proposal document in relation to an alteration to the upper age limit of a school has been expanded. In addition to providing the previously required detail upon how the proposal will improve the education and training achievements; increase participation in education or training; and expand the range of educational or training opportunities for 16-19 year olds in the area, the proposer must also now provide a statement as to how the new places will fit with the 16-19 organisation in an area and give evidence of local collaboration in drawing up the proposals; and evidence that the proposals are likely to lead to higher standards and better progression at the school.
- 6.2 The Guidance has not yet been updated to reflect the changes to the Regulations, but the DCSF School Organisation website advises that the changes need to be taken into account when using the Guidance.
- 6.3 The Proposer has been asked if they wish to add any further detail to their proposal document in light of the amendment to the Regulations.

7. **Suggested Reason for Decision**

The Governing Body have published a proposal which falls to be determined by the Authority under the provisions of the Education and Inspections Act 2006 and the 2007 Regulations.

8. **Alternative Options to be Considered and Recommended to be Rejected**

None. If the Authority fails to determine the proposal by 9<sup>th</sup> December, 2009 it must be referred to the Schools Adjudicator for determination.

9. **Legal Implications**

The statutory notice complies with the requirements of the 2007 Regulations. Details of the consultation undertaken are set out in Appendix 2. The proposal is not related to any other outstanding published proposal.

10. **Appendices**

Appendix 1 – Statutory Notice.

Appendix 2 – Full Proposal Document with Appendices A-C.

Appendix 3a – Representations received in support in response to Statutory Notice.

Appendix 3b – Objections received in response to Statutory Notice.

