

APPENDIX 5

Key points from DCSF guidance on School Re-organisation

5a – Closure of maintained schools

This would apply to the following options:

Closure of Cathcart Street Primary

Closure of Cole Street Primary

Closure of St Laurence's Catholic Primary

Who can propose the closure of a school?

The LA can propose the closure of any school.

Linked proposals

If proposals are related to others they would be published together, for example, the proposed closure of Cathcart Street and Cole Street in order to amalgamate the two schools would be published with the proposal to establish a new primary school.

Representations

A six week representation period follows publication of notices. Representations are to be sent to the LA.

Decision Makers

This is either the LA, or the Schools Adjudicator. The Adjudicator's decision is final but there are limited rights of appeal following LA decisions.

The LA decision maker in Wirral is Council's Cabinet.

What if there are no objections?

As long as the closure proposal was made by the LA, and there are no linked proposals which receive objections, the proposal can be determined by the LA Decision Maker within 2 months. Conditional approval cannot be given.

There is no right of appeal to the decision.

And if there are objections?

If there are objections, or a proposal is linked to another which receives objections, proposals must be passed to the LA Decision Maker, who must make a decision within 2 months of the end of the representation period.

In relation to primary school closures, conditional approval can be given in relation to:

- Changes to admission arrangements at another school
- The occurrence of any other condition with a specified date for any other school or proposed school

The date for conditional approval is set by the Decision Maker, but can be extended before the expiry date if the proposer, i.e. LA, requests this modification. If the condition is not met by the specified date, the proposal must be considered afresh by the Decision Maker.

If the proposals are not decided within 2 months, the proposal must be passed to the Schools Adjudicator with one week of the end of the 2 month period.

Who can appeal against an LA decision?

Where objections have been received, the following bodies may appeal against the LA Decision Maker's decision in relation to primary schools:

- The Anglican Diocese of Chester
- The Bishop of the Catholic Diocese of Shrewsbury
- The governing body/trustees of a Foundation or Voluntary school that is proposed for closure.

What happens if an appeal is made?

Appeals must be submitted to the LA within 4 weeks of the notification of the LA's decision. The LA then sends the proposal to the Schools Adjudicator within 1 week of receipt of the appeal. This includes any related proposals.

What factors are taken into account by Decision Makers?

These are the factors that must be examined:

- Will the proposal raise local standards of provision, and lead to improved attainment for children and young people? Are attainment gaps likely to be narrowed?
- Will SEN provision be improved, including wider school activities? Transport, funding, staffing and placement arrangements must be clearly stated.
- For schools causing concern, a proposal to close the school in order to amalgamate it with a more successful and/or popular school, should normally be approved if there is evidence that this will have a positive impact on standards.
- Proposals to close schools causing concern should be approved, subject only to checking that there will be sufficient accessible places of an acceptable standard available in the area to meet foreseeable demand and to accommodate the displaced pupils.
- Local diversity, the range of schools in the area, the impact on the aspirations of parents and whether the proposal will help raise local standards and narrow attainment gaps.
- Closure of schools with a religious character should not normally be approved where the proposal would result in a reduction in the proportion of denominational places in the area, unless the school concerned is severely under-subscribed, standards have been consistently low or where an infant and junior school (at least one of which has a religious character) are to be replaced by a new all-through primary school with the same religious character on the site of one on the predecessor schools.
- Will the proposal help children achieve the Every Child Matters principles? This includes extended services, personal development, and support for children and young people with particular needs.
- Is there sufficient capacity to accommodate displaced pupils taking into account likely future demand? The quality and popularity of schools with surplus places should be considered.

- Proposals to close schools with 25% or more unfilled places, and at least 30 surplus places, where standards are low for the Authority, should normally be approved. For all other proposals, standards, geographical, social and community use should be considered.
- Alternative sources of extended services
- The effects of any other changes to school provision in the area
- Accessibility planning, particularly for disadvantaged groups
- Proposals should not unreasonably extend journey times or increase transport costs, or result in too many children being unable to walk or cycle to school.
- Any sex, race or disability discrimination issues
- If the school currently includes early years provision, whether alternative provision will integrate pre-school education with childcare and other services for young children and their families, and whether educational standards and access for parents will be maintained or enhanced at alternative provision, which could be private, voluntary or independent.
- 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 greatest weight should be given to representations from those stakeholders likely to be most directly affected by the proposals.

What decisions can be made?

The Decision Maker can decide to reject, approve, approve with a modification (such as the closure date) or conditionally approve (see above). A reason for the decision must be given.

What if the proposal needs to be withdrawn?

As long as the decision has not been made, the proposal can be withdrawn in writing by the proposer.

What if the proposal needs to be modified after the decision has been made?

The proposer must apply to the Decision Maker for a simple modification, such as a change to the date of implementation.

More complicated changes which substantially change the nature of the proposal would require a revocation notice, followed by fresh proposals which then follow the statutory process.

Approval of a revocation notice would only be given by the Decision Maker if circumstances have changed so substantially that implementation would be inappropriate, or if implementation of the original proposal would be unreasonably difficult.

5B– Establishment of a new maintained school

This would apply to the following option:

A3 Amalgamation of Cathcart Street Primary and Cole Street Primary to form a new school on an existing or a new site.

Establishing a new school

Most new schools are now expected to be established by a “competition” where the LA invites proposals to establish the new school.

Alternatively, the LA must apply for consent from the Secretary of State to publish proposals for a new school without running a competition. This does not mean permission to establish a new school has been granted, and the proposal would be subject to the usual statutory process.

Other proposers can also apply for the Secretary of State’s consent to publish proposals for a new school without a competition.

Competition

A competition is now required when the LA wishes to establish a new school.

- The LA must invite proposals from potential providers
- The LA can publish their own proposal as part of the competition

Are there exemptions to a competition?

The following do not require a competition:

- A new Academy
- New 16 to 19 provision, mainstream or special
- A new Nursery School
- Transferring an existing school to a new site
- Rebuilding an existing school on its current site

Who makes the decision?

If the LA:

- Has entered its own proposal
- Is a member or has appointed a member of a proposed “Trust School”
- Appoints a charity trustee of the foundation of a proposed “Trust School”
- Exercises any voting rights or appoints a person with voting rights in the foundation of a proposed Trust school

Then the decision maker is the Schools Adjudicator, which would be likely to be the case if the amalgamation option went ahead in Woodchurch.

Who can appeal the decision?

If the LA is the Decision Maker, there is no provision to appeal the decision.

If the decision is not made within 2 months of the end of the representation period, the proposals must be referred to the Adjudicator.

The Adjudicator's decision is final.

The specification

The LA decides the outline specification for the new school, including

- Number of places
- Age range including any early years provision
- Mixed or single sex
- Admission number
- Location, playing field provision and transport links
- Opening date
- Estimated capital costs and funding sources
- Provision for pupils with SEN
- The area and community to be served
- Extended services or other community use
- Preferred specialism (secondary)
- Arrangements for transport and sustainable transport alternatives.

Capital funding

Regardless of the proposer who wins the competition, the LA must provide the total capital funding to invest in the new school, unless the proposer offers funding towards the project.

The Primary Capital Strategy for Wirral has been approved by Cabinet and by the DCSF. The first two years funding have been allocated mainly to projects arising from Phase 3 of the Primary Places Review - replacing the building of Park Primary School, and building a new primary school in Pensby. This sets a precedent, and a new primary school building in North Birkenhead could be considered as a priority for a future year of the 14 year programme.

If a new Voluntary Aided school wins the competition, the governing body are responsible for funding 10% of capital costs.

Sites

The LA must identify the proposed site, although proposers may put forward proposals to establish the school on a different site.

If the approved proposal is for a new Foundation, Trust, or Voluntary Controlled school, the LA must provide the school site and convey their interest to the governing body or Trustees. For Aided schools, the LA must provide playing fields, and may choose to assist the proposer with the site, although the onus is on the provider.

The use of existing buildings should be considered on value for money considerations.

New housing

A Section 106 agreement can sometimes be negotiated where the developer bears all or part of the costs of a new school. A competition must still be run, and the winner has input into the design and specification of the school.

What are the stages of competition?

- 1 Consultation, including on any linked closures – recommended minimum of 6 weeks, no upper limit, including at least one public meeting. Followed by: Invitation to bid (notice published)
- 2 Proposer engagement and submission of proposals – minimum of four months from invitation to bid
- 3 Publication of proposals (notice published) and promotion of public awareness – within 3 weeks of the expiry date for submitting proposals. Any linked closure proposals would be published at the same time.
- 4 Representations – 6 weeks, with a public meeting within the first 2 weeks
- 5 Decision – within 2 months of end of representation period (LA) or whenever (Adjudicator)
- 6 Implementation – as specified in the proposal notice

Does this mean we would need to consult again?

Probably. The statutory consultation needs to cover the **specific location** and specification of the new school, which has not been the case in the recent consultation. Preliminary consultation to consider a range of options, and/or principles, for a possible reorganisation, is not regarded as the statutory period of consultation.

Advertising for proposers

The DCSF appoints mandatory consultants to market the competition, place adverts and act as a first point of contact. When potential proposers have been identified, the consultants will hold a seminar to provide advice to proposers.

The LA has the opportunity to attend the seminar and to take part in the question and answer sessions.

How does the LA submit a proposal for a community school?

Wirral has an APA rating of 3. Consequently, after the invitation to bid, the LA must apply to the Secretary of State for permission to submit a proposal for a community school within the competition.

Would consent be given?

Each application would be considered on its merits. Guidance indicates that consent may be given in the following circumstances:

- There is a higher than average number of Academies, voluntary or foundation schools and there are few or no schools in special measures within the authority;
- There is a clear case that a community school would build on existing diversity in the area. Diversity includes specialisms as well as ethos.

The following factors will be considered by the Secretary of State in considering applications for consent:

- The diversity (including distinct character and ethos) of provision within the area
- The views of interested parties e.g. parents and the local community;
- Whether the proposals will contribute to raising standards: taking into consideration performance across the LA and local schools;
- The range of curricular specialisms to be offered by the proposed community school and within the authority.
- Whether the core offer of extended services will be provided and if there will be a varied menu of interesting activities.

In what circumstances can a school be established without a competition?

The amalgamation option in North Birkenhead does not fall into any of the exempt categories.

Consequently, permission not to hold a competition must be sought from the Secretary of State.

When will the Secretary of State give consent to not hold a competition?

Guidance indicates that consent might be given in the following circumstances:

- Straightforward amalgamations of infant and junior schools where a replacement primary school is proposed.
- Where there is to be a reorganisation of religious schools in the area, and schools with a particular religious character are to be replaced by schools with the same religious character
- Where an independent proposer proposes a new school to increase diversity in the area, rather than in response to an LA's need to reorganise.

The following factors will be considered by the Secretary of State in considering applications for consent in the case of new primary schools:

- The contribution the school would make to levels of local diversity i.e. including the range of categories, specialisms, size etc;
- The prospect of other proposer interest if a competition were run (this factor will apply in the case of applications from the LA only);
- Local standards i.e. the standards achieved by existing schools and the performance of the LA in delivering children's services (this factor will apply in the case of applications from the LA only);
- Urgency for the new school to be in place and the impact of the competition process; and
- Any views expressed by interested parties e.g. parents and the local community.

Who would be the Decision Maker if there is no competition?

The decision would be made by the Adjudicator, since the new school proposal would include a bid from the LA to open either a community or a Foundation school.

5C- Commentary on the recommended options

Closure proposals

Options A1, A2 and B would be ultimately decided by the LA Decision Maker. If necessary, conditional approval can be given in relation to events at other schools, such as gaining planning permission approval.

Referral to the Adjudicator on a closure decision on options A1 and A2 can only be made on appeal by the two Diocesan Authorities, should they choose to do so. For Option B, the two Diocesan Authorities or governing body of St Laurence's Catholic Primary School can refer the decision to the Adjudicator, if they choose to do so.

New school proposals

In this case, the LA would apply to the Secretary of State for consent to publish proposals without a competition. The linked proposals to close existing schools and open a new school would then follow the usual processes and all three would ultimately be decided by the Schools Adjudicator.

If consent to establish without a competition is denied and a competition must be held, the LA would need to consult once again on the amalgamation option.

The LA could then apply for consent from the Secretary of State to enter a proposal for a community school into the competition. If this consent is not received, the LA can still enter a proposal to establish a new Foundation school into the competition.

In either situation, the decision maker would be the Adjudicator. If the new school is a Foundation school, the site and buildings would be conveyed to the Foundation governors or Trustees, while any capital costs would still be met by the LA.