

DUDLEY SCHOOLS ORGANISATION COMMITTEE

GENERAL GUIDANCE ON PROCEEDINGS

INTRODUCTION

Dudley Schools Organisation Committee ("SOC") is convening to consider proposals brought by the LEA (and one proposal by the Diocese of the Church of England) to reorganise primary school provision with the local area. Essentially these proposals entail the closure of several schools and the establishment of one new school. SOC has powers to decide on these proposals under the Schools Standards and Framework Act 1998, subject to referral to the Schools Adjudicator in certain circumstances.

As SOC is a statutory body its decisions are potentially subject to challenge by way of judicial review. Therefore SOC must exercise its decision-making powers, and conduct its proceedings, in accordance with the principles of public law and natural justice. Essentially this means SOC's decision must be taken within its statutory powers and in accordance with its statutory procedures, and must not be irrational (i.e. manifestly unreasonable) or disproportionate. SOC must have regard to any statutory guidance issued by the Secretary of State and take into account all relevant considerations and disregard all irrelevant considerations.

In the case of the Hasbury and Halesowen proposals, there are 3 statutory proposals to consider:

1. Discontinuation of Hasbury C of E Primary School
2. Discontinuation of Halesowen C of E Primary School
3. Establishment of new voluntary aided school at the Hasbury site.

It is anticipated that at a later date SOC will be required to consider proposals to discontinue certain other schools

This guidance note outlines SOC's powers to decide upon the statutory proposals and the procedures for so doing. It is not intended as a comprehensive source of advice on all the legal issues that might impact on SOC's decision and the conduct of its proceedings: further advice will be available as specific issues arise.

FACTORS TO BE CONSIDERED IN REACHING DECISIONS

SOC must have regard to the Secretary of State's Guidance for Decision Makers as to the issues to be considered in deciding on statutory proposals. (This Guidance will be provided before the SOC meeting).

In particular the statutory guidance requires SOC's to give consideration to 5 preliminary questions before deciding on statutory proposals:

1. Is any required information missing/not available to SOC?
2. Does the published notice comply with statutory requirements?
3. Has the required statutory consultation been undertaken prior to publication of the notice?

4. Are adequate capital resources available to implement the proposals?
5. Are the proposals linked or related to other published proposals?

The SOC's legal advisor or secretary should assist in considering whether the published notice and consultation process have complied with the statutory requirements. If SOC judge that the requirements have not been met then the proposals will be referred back to the LEA or the other promoters.

SOC must be satisfied that adequate funding is available for the implementation of the proposals if approved. The LEA should be asked to provide evidence of this, by way of a signed approval of the funding by an authorised LEA representative. SOC cannot make approval of proposals conditional on securing funding, except in limited, prescribed circumstances.

SOC should consider whether sets of published proposals are related or linked to one another; if they are deemed to be related SOC must consider them together. Proposals would generally be regarded as related if they are included in the same published notice or where a decision on one of them would directly affect the outcome of another (e.g. schools in very close proximity to one another).

Once SOC has considered these preliminary questions it should then proceed to consider the merits of the proposals and the representations made for and against them. SOC can take account of Schools Organisation Plans that have been previously published, as an indication of local educational provision and strategy, but other factors should also be considered significant, as outlined below.

Proposals to discontinue a school

In considering proposals to close a school, SOC should take account of the following factors (Sections 1 and 2.2 of the Guidance):

- **Effect on standards and contribution to school improvements**
Including: the standards of education in existing and proposed alternative provision, and the effect of the proposals on other institutions.
- **Need for places**
Including: the overall supply and likely future demand for places; and whether the proposals will reduce the proportion of denominational places.
- **Finance**
Including: whether the proposals represent a cost-effective use of public funds.
- **Statutory objections and views of interested parties**
The views of parents and local residents including those particularly affected by the proposals, must be taken into account, in addition to the views of the LEA, other schools and colleges in the area, the views of the LSC and the views of the Early Years Development and Childcare Partnership where nursery provision is affected.
- **Other issues**
Any transport implications; any issues of discrimination or human rights; impact on school playing fields or infant class sizes; effect of closure on the local community.

The Guidance notes that LEAs are encouraged to take active steps to reduce surplus places in schools to ensure that education is provided as cost-effectively as possible. However, the removal of surplus places must always support the core agenda of raising standards and respecting parents' wishes by seeking to match school places with parental choices.

Proposals to establish a new school

In considering proposals to establish a new school, SOC should take account of the following factors (Sections 1 and 2.1 of the Guidance):

- **Effect of standards and contribution to school improvement:**

Whether the proposals will improve standards, quality, range and/or diversity of educational provision in the area, and the effect on other institutions' standards.

- **Need for places**

Whether there is a need for additional places in the area, and the extent of parental demand for the type of school in question.

- **Finance**

Whether the proposals represent a cost-effective use of public funds; whether all the land required for the site is available; whether the promoters of the new voluntary aided school have provided a statement of assurance that the governing body of the new school will be able to meet all their financial responsibilities for building work required at the new school.

- **Views of interested parties**

Including those of parents, local residents, the LEA, other schools in the area, the Church of England and Roman Catholic dioceses in the area, the Learning and Skills Council, and the Early Years Development and Childcare Partnership.

- **Community cohesion**

The extent to which the proposals address the need to promote the community cohesion and take account of the needs of the wider community.

- **Equal opportunities**

Any issues of discrimination.

- **Effect on school journeys**

Implications for transport and access to the site.

- **Other issues**

Including: whether proposals comply with the infant class size limits; which body is to hold the land required by a new voluntary aided school; whether a new foundation body will be established or the proposal is to join an existing foundation body; whether the school will meet the minimum statutory requirement for provision of playing fields; whether Secretary of State consent is needed for any other aspect of the proposals; whether the timetable for implementation is likely to be achieved.

The above list of factors are not conclusive and SOC may give such regard to them, and to any other relevant factors, as they consider appropriate in the circumstances.

DECISION-MAKING PROCESS

SOC has the power to take one of the five decisions in relation to the proposals:

- (a) reject the proposals;
- (b) approve them without modification;
- (c) approve them with modifications that SOC think desirable following consultation with relevant bodies;
- (d) refer the proposals to the adjudicator; or
- (e) give a conditional approval (in limited, prescribed circumstances).

The proposals must be referred to the adjudicator in any event if SOC fail to reach a unanimous decision across the groups, or if more than two groups abstain from voting. The adjudicator will consider the proposals afresh and may decide to reject or accept them, or accept them with modifications. The proposals will also be referred to the adjudicator where SOC has not considered them within the prescribed time.

Although SOC has powers to modify proposals both before and after approval, such modifications should not be fundamental to the character of the proposals overall. If significant modifications are required SOC should refer the proposals back to the LEA or the other promoters to be reworked before resubmitting to SOC for approval. SOC's powers of modification are typically used in respect of a date of implementation or other similar details.

SOC's powers to give conditional approval are similarly limited, to a list of circumstances prescribed in regulations. These include: the acquisition of a site or access rights to a site; DfES approval of PFI credits or a capital grant, formulation of a federation or charity to operate the school. If conditional approval is granted SOC must set a date by which the conditions must be satisfied before the approval will take effect.

PROCEEDINGS AT MEETINGS

SOC's proceedings must be conducted fairly and lawfully in accordance with the principles of natural justice. SOC's members must be able to act with impartiality and it is important for SOC members to declare any possible conflicts of interest they might have in order that SOC can determine whether or not it is appropriate for those members to participate in the decision-making.

To the extent that it is not prescribed in regulations, the conduct of SOC meetings is a matter for SOC's discretion, generally managed under the discretion of the Chair. SOC's constitution establishes the main procedural framework for SOC meetings (e.g. quorum) and the requirements of the constitution must be complied with.

SOC has discretion to decide the extent to which its meetings should be open to the public. Dudley SOC's constitution provides that meetings should be open to the public unless there is a good reason otherwise. SOC may withdraw to deliberate its decision in private and groups may wish to withdraw separately for discussion before voting takes place. Voting may take place

either in public or private, although as noted above Dudley SOC's constitution presumes proceedings will be held in public in most cases.

SOC has discretion to decide whether to hear oral representations or simply take written evidence. Where interested parties are permitted to make oral representations SOC may wish to set certain conditions around this, for example:

- prior notification by the interested party that they wish to speak and an outline of what they wish to say;
- time - limiting oral representations to e.g. 5 minutes per person;
- hearing from one nominated spokesperson where a large number of interested parties wish to make the same, or similar representations.

Voting

Dudley SOC presently comprises 5 groups:

1. LEA group
2. Church of England group
3. Roman Catholic Church group
4. Learning and Skills Council group
5. Schools group

When voting on statutory proposals (i.e. the school discontinuance and establishment proposals) each group has one vote and the groups must vote unanimously (with no more than two groups abstaining) in order to make a decision on a statutory proposal.

In order to determine what each group's vote on a statutory proposal will be, the members of each group first have the opportunity to vote within their group on the statutory proposal. A decision within a group is carried by the majority of members voting (unless the group decides otherwise). Where the majority, or equal number of members within a group have a conflict of interest on a statutory proposals the whole group should abstain from the SOC vote.

SOC can defer making a decision on a statutory proposal providing all groups unanimously agree to do so. If they cannot so agree, SOC should continue to consider the statutory proposals and if a unanimous decision cannot be reached on the proposals, refer them to the adjudicator.

Where SOC votes on matters other than statutory proposals, the decision will be carried by the majority of all members present and voting (i.e. not voting as groups) unless SOC's contribution expressly provides for another method of voting and/or quorum.

Dudley SOC's quorum for a meeting is one-third of all members, although under the constitution, another quorum applies in some circumstances (e.g. to amend the constitution or appoint the Chair). Decisions of SOC cannot be properly taken unless a quorum is achieved.