



DETERMINATION

Case reference: STP632

Proposal: To expand Moor Hall Primary School, Sutton Coldfield

Proposer: Birmingham City Council

Date of Adjudicator's Determination: 16 August 2017

Determination

Under the powers conferred on me in section 21 of the Education and Inspections Act 2006, I hereby approve conditionally the proposal to increase the capacity of Moor Hall Primary School, Sutton Coldfield with effect from 1 September 2018.

The referral

1. On 15 March 2017 the School Organisation Manager of Birmingham City Council (the local authority) wrote to the Office the Schools Adjudicator (OSA) on behalf the local authority, (the proposer) referring to the adjudicator for a decision a proposal made by the local authority to expand Moor Hall Primary School, Sutton Coldfield (the school) by adding 30 places in each year group admitted to the school from September 2017.
2. On 28 July 2017 the same person wrote again to the OSA, resubmitting the proposal with a revised implementation date of 1 September 2018.

Jurisdiction

3. On 3 November 2016, having carried out appropriate consultation, the local authority as the proposer formally published the proposal in its original form. The notice was in the form required by the Education and Inspections Act 2006 (the Act).
4. The representation period concerning the proposal ended on 1 December 2016. The proposer failed to determine the proposal within the timescale of two months from this date which is the period specified in The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 (the Regulations) for the proposer to determine the proposal. In accordance with those Regulations, the proposer referred the proposal to the adjudicator for determination.
5. As the adjudicator appointed to consider the proposal, I gave approval to the proposal on 14 June 2017, with the condition that planning permission for the associated building and other works at the school must be obtained by 21 July 2017, a date which the local authority had indicated was achievable.

On 26 June 2017 the proposer informed the OSA that it considered it unreasonably difficult to implement the proposal on this basis, and cited the length of time required for the planning application process and difficulties associated with the period of Purdah preceding the General Election which took place on 8 June 2017. The local authority requested that the adjudicator modify the implementation date and the date by which planning permission would be necessary, making reference to the statutory guidance for proposers and decision makers currently in force which indicates that this would be possible.

6. Paragraph 21 of the Regulations however provides no authority for such a modification to be made in the case of proposals made by a local authority, and the proposer was informed of this position. As a result, it decided to resubmit the existing proposal, with a modified implementation date.

7. Paragraph 22 (2)(b) of Schedule 3 of the Regulations states that:

“Where a conditional approval is given, and an event specified in that approval does not occur by the required date

(a) paragraph 13 ceases to apply to the proposals; and

(b) the proposals must be considered afresh by the local authority or the adjudicator (as the case may be)....”

8. In this case, when the local authority submitted the proposal with a revised implementation date, the specified event of the granting of planning permission by 21 July 2017 had not occurred. Paragraph 13 of the Regulations requires implementation of proposals in the form in which they were approved, and so the proposal in its original form did not fall to be implemented. Instead the proposal now takes the form in which it was submitted on 28 July 2017. That is to say, it is the same proposal but with a revised implementation date of September 2018. My reading of the Regulation set out above is that the adjudicator must consider the proposal afresh in its revised form.

9. I am satisfied that this proposal has been properly referred to me in accordance with the Act and that, therefore, I have jurisdiction to determine this matter.

Procedures

10. In considering this matter I have had regard to all relevant legislation and guidance.

11. I have considered all the papers put before me including the following:

- a. the agenda and supporting papers for the meeting of the Cabinet Member for Children, Families and Schools and the Strategic Director for People of the Council held on 27 January 2017;
- b. prescribed information from the proposer as set out in the

Regulations;

- c. copies of objections received by the proposer after its publication of the proposals;
- d. the proposer's response to the objections and comments received;
- e. additional information which I have requested from the proposer including details of its decision-making process, the rationale for the proposal, the availability of funding, matters relating to the granting of planning permission under the relevant legislation and its plans concerning the accommodation to be provided for additional pupils, originally in September 2017, but now in September 2018, should the proposal be implemented.

12. I have also viewed a recording of the relevant part of the meeting of the local authority's Schools, Children and Families Overview and Scrutiny Committee which took place on 8 February 2017 and have read the report relating to that discussion and the decision of the Committee which was sent on 16 February 2017 by the Committee Chair to the Cabinet Member and Chief Officer.

13. On 5 April 2017 I held a meeting with officers of the local authority and representatives of the school at the offices of Birmingham City Council. On the same day I visited Moor Hall Primary School to view at first hand the accommodation and locality and held an open forum for members of the public which was also attended by officers of the local authority.

14. I have considered all the information and the representations put to me at those meetings and subsequently.

Background

15. Moor Hall Primary School is a one-form-entry foundation primary school situated in a residential area of Sutton Coldfield. It thus admits 30 children to reception each year and provides a total of 210 places for children aged four to eleven. Its planned admission number (PAN) is 30. It is accommodated in single storey buildings within its own site which includes playing fields. Access to the school is via roads which also serve local residents. The school's most recent Ofsted report found that it was outstanding.

16. The local authority has been expanding its provision of primary school places in response to rising demand in recent years, and has implemented expansion proposals at a number of schools. In 2015, the school responded to an invitation by the local authority to express an interest in expansion to accommodate additional pupils. The proposal subsequently made by Birmingham City Council to expand Moor Hall Primary school by doubling its intake from September 2017 was made with the backing of the school's governing body and the governing body remain keen that the school expand. Where a local authority proposes that an enlargement of a school is by more than 30 pupils and by at least 25% of its existing capacity, it must follow a

statutory process set out in the Regulations. This involves:

- a. the publication of a proposal, the minimum content of which is laid out in guidance from the Secretary of State
- b. a representation period (a formal consultation) of not less than 4 weeks
- c. a decision concerning the proposal
- d. the implementation of the proposal.

17. Although a period of consultation prior to the publication of such a proposal is not a statutory requirement, it is nevertheless regarded as good practice, and the local authority included such a stage before publishing the proposal and carrying out formal consultation on it. The local authority's decision-making process delegates the determination of school organisation proposals to the Cabinet Member jointly with the Chief Officer. Its constitution also provides for such decisions to be reviewed or scrutinised by an Overview and Scrutiny Committee, the powers of which are set out in the Local Government Act 2000. These include the power to recommend that a decision be reconsidered by the person who made it.

18. On 27 January 2017, the Cabinet Member for Children, Families and Schools and the Strategic Director for People received a report which recommended the approval of the proposal to expand Moor Hall Primary School. This report included details of the background to the proposal, the process which had been followed by the local authority in its capacity as proposer under the Regulations, and the products of both the consultation prior to the publication of the proposal and of the statutory representation period which followed its publication. The decision-makers approved the proposal but the Children and Families Overview and Scrutiny Committee exercised its right to "call in" the decision for scrutiny within four days of it having been taken, as provided for in the council's constitution. At its meeting on 8 February 2017, the Committee took the decision to refer the decision for reconsideration by the decision-makers. By then, however, the statutory period within which the proposal must be determined by the local authority as proposer had expired and the proposal has been referred to the adjudicator. The original decision-maker approval has accordingly been withdrawn.

19. The local authority's website provides access to a video recording of the meeting of the Overview and Scrutiny Committee. I have viewed that part of the recording at which the proposal was discussed. The grounds given by the Committee for its decision to require the decision to be reconsidered were that:

- (i) there was "*a substantial lack of clarity, material inaccuracy or insufficient information providedand the uncertainty remaining, particularly about the effect on other schools and sufficiency*", and
- (ii) "*the Executive appears to have failed to consult relevant stakeholders before arriving at its decision, because having*

published an intake of 60 for 2017 without sufficient caveats it appeared that the decision had been made prior to consultation and thus the consultation was flawed”.

20. The former concern was based on the question of whether the extra places were needed. There was doubt that the proposal was necessary because neighbouring schools had already expanded, and because the real reason was that the school wanted the extra places for financial reasons. Further doubts were cast because the local authority’s own forecasting system appeared to indicate that there might be overprovision in the area in the future.

21. The concern about the openness of the consultation had been caused because the local authority’s booklet for parents about admissions to primary schools for 2017 had stated that the school’s PAN would be 60, and had not stated that this was subject to the outcome of the statutory proposal procedure.

22. Although not referred to in the grounds given by the Overview and Scrutiny Committee, the Committee had also considered concerns which had been expressed about road safety by residents during the statutory consultation. This had been a significant feature of the consultation response.

The Proposal

23. The proposer contends that the potential benefits of this proposal are:
- a. enabling it to meet the demand for primary school places in Birmingham;
 - b. giving more children the opportunity afforded by an outstanding primary education; and
 - c. allowing local families to access local schools.

Consideration of Factors

24. I have considered the proposal afresh taking careful account of the arguments of all those involved. I have read the responses made to the consultation carried out before the proposal was published and during the statutory representation period.

25. I have also taken note of the reasons which the local authority’s Overview and Scrutiny Committee gave for requiring there to be a reconsideration of the decision to approve the proposal. I believe it is important that I should set out my own view of each of these concerns expressed by the Committee if my determination of the proposal is to be seen locally as having taken all relevant matters into account. In addition to the matters which I am guided to have in mind in considering the proposal as a decision-maker, and which I shall address below, I have therefore been concerned particularly to assure myself that:

- a. the local authority's forecast need for additional primary school places can be relied upon to be reasonably accurate;
- b. the choice of the school as a location for additional primary places can be justified and that it is the most appropriate in the light of available alternatives;
- c. the formal consultation which was carried out by the proposer was in accordance with the Regulations, and in particular that the opportunities for representations to be made concerning the proposal were genuine because the outcome of the proposal had not been pre-determined.

26. I shall consider the consultation first. The Secretary of State's guidance to decision-makers lays emphasis on the need for the consultation which is carried out in connection with a statutory proposal to make a prescribed alteration to a school to have been "fair and open" and for the proposer to have given full consideration to all the responses received. In line with the "strong expectation" in guidance that proposers will consult interested parties in the development stage of a planned change, the proposer also carried out a consultation in advance of the publication of the proposal. A summary of this consultation was reported to the decision-makers together with a copy of each of the responses received during the representation period following publication of the proposal. It is clear that the decision-makers were able to consider all this material directly, and I have done so again myself.

27. Officers of the local authority have on more than one occasion apologised for the error of judgement which was made when it was decided to show a PAN of 60 at the school in the information provided to parents about admissions to primary schools for September 2017. Clearly, as has been acknowledged, the correct approach would have been to be explicit about the situation of the school and to provide parents with the information that the PAN was 30 but that this was subject to the outcome of the proposal to double the intake number. It is however self-evident from what has happened subsequently, including the referral to the adjudicator, that no "decision" was made by the proposer in advance of the consultation on the proposal in the way that objectors have alleged. I have viewed the records kept by the proposer of the full details of the process which it has followed in setting out the proposal and seeking and receiving comments on it. I am content that this was in accordance with the guidance of the Secretary of State and that there is no need for me to give further attention to this aspect of the proposal.

28. As far as the resubmitted proposal is concerned, I have considered whether the local authority was under an obligation to publish the revised form of the proposal and to allow a further period of representation before its resubmission. The Regulations require the adjudicator to consider the proposal afresh, as I have set out above. The proposal is the same proposal as that made previously, and I do not consider that the change of implementation date is so significant that the responses made to the original form of the proposal are no longer relevant to my consideration. It would of course be possible for the revised proposal to be published as if it were a new proposal, and for the proposer then to consider representations concerning it

before making a determination about it. However, that would ignore what I understand paragraph 23 of the Regulations to require in these circumstances concerning the original proposal. I am therefore happy to consider the revised proposal in the light of the representations made about it in its original form.

29. Secondly, I have asked the local authority to give me comprehensive details of the means which it uses to forecast pupil numbers including the geographical basis on which it does this, and for its comments on the reasons behind the perception of uncertainty concerning the need for additional places in the area. Having viewed the forecasting methodology employed by the local authority, which gives projected pupils numbers for each ward within the city, I am of the view that it is robust and sophisticated, being sensitive to matters such as migration, housing growth, existing vacancies and parental preference – and so is likely to yield results which will have a high level of certainty attached to them. A need for additional places in the form of additional forms of entry in Sutton Coldfield, the district in which the school is situated and which comprises four wards used for planning purposes, was first identified in 2015. Expansion at other local schools has provided some of the needed places. The need for further additional places has been called into doubt because the most recent forecast information (November 2016) assumed that the proposed expansion at Moor Hall would go ahead and so included the new places in the total already available, and referred to a “risk of over-provision” in the future. The proposer remains confident as to the need for the additional places that will be provided if the proposal goes ahead, and I am of the opinion that this view is sufficiently well founded that it would be inappropriate for me to set it aside.

30. The proposer has also provided me with the full details of the process it has followed in coming to a view that the additional places which its forecasts say it still needs in Sutton Coldfield should be located at the school. It has laid out for me its evaluation of the seven alternative schools in the district which were considered for expansion in 2015, one of which was Moor Hall. Six factors were taken into account:

- a. the shortfall of places in the ward where the school is located;
- b. the school’s Ofsted grading;
- c. the under/oversubscription of the school reception year with first preferences;
- d. the existing internal capacity of the building;
- e. the area of net external space over minimum guidance from building bulletin 99 (which although superseded by later non-statutory guidance nevertheless provides a common yardstick when comparing schools); and
- f. a review of matters such as construction access, planning restrictions, highways issues and topography.

31. Again, this is a sophisticated and rational process and was carried out

carefully by the local authority. The latest forecast information shows continuing demand for places in the ward in which the school is located and in one of its neighbouring wards. The school takes a total of 95% of its pupils currently from these two wards. The choice of Moor Hall for expansion in September 2017 as originally intended was based on the original evaluations carried out in 2015 and in the light of its location in relation to the currently projected need for places as well as its existing popularity, compared to the remaining alternatives. The local authority has told me that there are currently 34 pupils on the school's waiting list for a place in Reception in September 2017. It explained concerning the proposal in its original form that if it did not go ahead these children were likely to be offered places at nine different schools and that five of these schools have lengthy waiting lists themselves. I assume that this process is now in hand. Objectors have pointed to the existence of vacancies at other schools as a reason to oppose the location of additional places at Moor Hall, but it is of course the overall picture of projected pupil numbers across schools and their location which must be taken into account by the proposer when making provision for the future. The statutory guidance to which I must have regard states:

“The existence of surplus capacity in neighbouring less popular schools should not in itself prevent the addition of new places.”

32. In summary, I have no substantive reason to call into question the local authority's identification of Moor Hall as an appropriate location for expansion to take place.

33. I shall consider in the following paragraphs the further matters set out in the Secretary of State's guidance for decision makers which are relevant to the proposal.

Educational standards

34. As noted above, the school's most recent Ofsted inspection report described it as “outstanding”, and the local authority clearly has confidence in the school leadership's ability to deliver a successful increase in the size of the school.

The Availability of Finance

35. The original proposal included the initial use of temporary additional accommodation in September 2017 with a subsequent building programme to deliver additional classrooms and internal refurbishment of the existing building. This remains the intended means of implementation, but with implementation in 2018. The local authority's capital programme for 2017-18 was approved on 18 April 2017. I received assurances concerning the originally proposed implementation date that financial provision for the building works was included in the approved budget for 2017-8. It is too early for the local authority to have decided on its capital programme for 2018-19.

Playing fields

36. I have been told that the local authority has received advice from

Sports England about the effect of the proposal and possible encroachment on to the playing field, as it was advised to do in response to its planning pre-application. This response has been favourable, I am told, following the local authority's demonstration that the proposal would not result in the loss of the existing under-14 pitch provided on the school site. Nevertheless, full planning permission has yet to be granted.

Travel and accessibility

37. The proposed additional accommodation includes a two-storey classroom block and the feasibility study provided to me by the local authority includes for example a wheelchair lift and disabled toilet facilities. I am satisfied that accessibility planning has been taken properly into account.

38. The school-place planning information above indicates that there is a good likelihood that additional admissions will be from relatively near to the school. A revised School Travel Plan which promotes sustainable transport options for parents, pupils and staff of the school has been produced in the light of the proposed expansion. I therefore think it unlikely that the proposal will lead to increased journey time or increased transport costs.

39. A Transport Statement which evaluates the transportation aspects of the proposal has been commissioned by the local authority's design, construction and facilities management consultancy. It is intended to accompany any application for full planning permission and its publication was imminent on the day on which I visited the school.

The views of interested parties

40. The report made to the local authority's decision makers on 27 January 2017 included the responses received during the consultation and representation periods. The latter produced 41 responses which were almost exclusively from parents and local residents. About two-thirds were opposed to the proposal, and the most common themes mentioned by respondents were the increase in traffic and parking problems near the school that would result. Further concerns related to the design of the proposed additional accommodation and the impact on local residents.

41. At the open forum meeting which I held at the school, those present were informed that the Transport Statement was soon to be published and I agreed to allow any further comments, including any from interested parties not able to be present at the meeting, to be made after the date of the publication of the survey, since its contents would be within the scope of my consideration. It was also explained to those present that the Transport Survey would accompany any application for full planning permission and that it was possible that the adjudicator's decision could be conditional upon certain prescribed events taking place. One such possible condition is the granting of full planning permission under part 3 of the Town and Country Planning Act 1990.

42. I have read the Transport Statement, which is a comprehensive analysis of all aspects of the likely impact of the proposal on transport issues,

including on-street parking in the vicinity of the school. The report concludes that:

“...the proposed expansion to Moor Hall Primary School would have a significant impact on the surrounding highway network, and the parking beat surveys undertaken have demonstrated that there is sufficient on-street parking capacity to accommodate the additional demand associated with the proposed expansion to Moor Hall Primary School.”

43. This conclusion has been challenged by many of those who wrote to me following the meeting. I received correspondence from 29 individuals, 19 of whom clearly stated their opposition to the proposal. Comments on traffic and road safety were made in 24 of the communications and 10 objectors complained about the accuracy or validity of the Traffic Survey, and some provided a detailed critique of it. Eight correspondents were concerned about the adequacy of the proposed buildings or of the site to accommodate additional numbers, and two about the effect on neighbours.

44. There were also criticisms made to me about the process which has led to the making of the proposal, which have included that there was some form of prior agreement between the school and the local authority, and I stated my view about this suggestion earlier on in this determination. I have also set out above my view about the demonstration of the need for additional places in the locality, and about the choice of the school as a place to provide them. Reference has also been made to the view expressed by the school to parents that it would be more financially viable if it were expanded, and to the fact that this was not stated in the proposal documents. My view on this is that any financial security of this sort for a school is not about financial gain in a simplistic sense or for the benefit of individuals. Rather, it is to do with the value in educational terms which can be obtained for pupils by a school, since school budget shares are provided for the sole purpose of being spent to provide education to children. If a benefit in terms of a greater financial security or economies of scale from the operation of a larger school were to be gained by expansion, this would be a by-product of such a proposal. The justification for expanding the school in the first place, however, can only be the provision of high quality school places for children, and that is what is stated in the proposal, as it should have been.

45. It is open to me to decide that the proposal should be rejected, or approved with or without condition being attached to such approval. I am of the view that the case has been made by the local authority for the expansion of this outstanding school in order to meet the need the local need for the places which will be provided if the proposal goes ahead, and that I should therefore not reject the proposal.

46. There remain real concerns however about the impact of expansion in terms of increased traffic and the associated potential effects on local residents. The local authority has confirmed to me that these matters will be subject to consideration by the Planning Authority prior to the granting of any planning permission under Part 3 of The Town and Country Planning Act, 1990. The proposal would be subject to further statutory consultation including

with the council's Highways department, which one correspondent has complained has not yet been the case. The local authority has advised me that it submitted a planning application concerning the scheme for the permanent expansion of Moor Hall Primary school in July 2017, and that a decision is expected by 3 October 2017.

47. The local authority has also advised me that it may be necessary for there to be a further planning application for temporary accommodation on the site in September 2018, in which case this permission would be needed by 30 June 2018. I approve the proposal subject to the relevant planning permission, both for the temporary accommodation and for the full scheme, having been granted by 30 June 2018.

Conclusion

48. I approve the proposal to expand Moor Hall Primary School as set out in the proposal made by Birmingham City Council, subject to the granting of planning permission for the associated building and other works at the school by 30 June 2018.

Determination

49. Under the powers conferred on me in section 21 of the Education and Inspections Act 2006, I hereby approve conditionally the proposal to increase the capacity of Moor Hall Primary School, Sutton Coldfield, for September 2018.

Dated: 16 August 2017

Signed:

Schools Adjudicator: Dr Bryan Slater