

**Report of the Director of Children and Families**

**Report to Scrutiny Board (Children and Families)**

**Date: 12<sup>th</sup> June 2019**

**Subject: A report on the School Organisation Proposals and Objections Procedure**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Summary of main issues**

1. This report briefly sets out the process followed in opening, closing and making prescribed alterations to schools and academies in Leeds.
2. As requested by Scrutiny Board the report also sets out potential options along with recommendations to ensure an appropriate level of rigour and challenge continue to exist where objections are received following the discontinuance of the School Organisation Advisory Board.

**Recommendations**

3. Scrutiny Board is requested to:
  - Note the current level of rigour within the existing process;
  - Note the decisions that fall outside of local authority control and the significant discrepancy between local transparency in decision making and that which takes place for Academies and Free Schools; and
  - Advice on the preferred course of action

## **1 Purpose of this report**

- 1.1 This report sets out the process followed when opening, closing or making prescribed alterations to schools, and academies. It describes the process in Leeds where the local authority is the decision maker and how such changes take place where the local authority are not the decision maker. Within that context it sets out the nature of objections that have been received to proposals that led to the former School Organisation Advisory Board (SOAB) meeting along with options and recommendations for Scrutiny Board to consider in respect of future decisions.

## **2 Background information**

- 2.1 In October 2007, Executive Board were advised of the decision by the Department for Education (DfE), under Section 29 of the Education and Inspections Act 2006; to abolish the need for School Organisation Committees (SOC) to make decisions on statutory proposals where objections had been received following the publication of statutory notices in relation to:

- Closing schools
- Opening new schools
- Making prescribed alterations to schools.

- 2.2 Executive Board decided at that time to establish SOAB to consider objections and provide advice. A Scrutiny Board working party was established in 2009 to consider the consultation process in prescribed alterations to schools, using City of Leeds as a case study, publishing their report, with recommendations in April 2010. The Academies Act 2010 introduced further changes whereby all decisions relating to Academies opening, closing or making prescribed alterations sits with the Secretary of State, or delegated to the Regional Schools Commissioner (RSC). There was a further legislation change in 2014 relating to school organisation proposals to shorten and streamline the process, and provide more opportunities for maintained schools to make some decisions for themselves.

- 2.3 Following the legislative changes in 2014 Executive Board were asked to approve some changes to the consultation process to enable a greater level of engagement with stakeholders, providing more openness and transparency. Since 2014 there have been more than 40 proposals brought forward for decisions by Executive Board and SOAB has been called on to meet 6 times following receipt of objections. The first of those occasions was in relation to a consultation that pre-dated the changes and there were numerous objections based on lack of transparency. The remaining 5 are focused on further in this report.

- 2.4 Discussions with neighbouring local authorities has revealed that only one has an early engagement process similar to SOAB which they are now looking into dissolving. Whilst some, in common with Leeds, take decisions on school organisation matters to the Executive Board, others have the decision taken by the lead member in consultation with the Director of Children Services. One LA has informed us that following the publication of a Statutory Notice but before a final decision by Executive Board that their Children's Scrutiny Board meets to discuss and give advice to Executive Board.

## **3 Main issues**

- 3.1 The context of educational provision, both locally and nationally, has continued to change since the abolition of SOCs. The Academies Act 2010 has altered the balance of provision, and continues to do so, with over half of all secondary schools in Leeds now academies, and a growing proportion of primary schools. Decision making for prescribed alterations to Academies sits with the RSC unless they choose to refer that decision to the Secretary of State. If an academy is requesting funding from the local authority, then the Local authority remains the decision maker on the allocation of capital funding. With the legislation for the Free School Presumption, it is very likely that any new school opening in the foreseeable future will be an Academy.
- 3.2 Before moving on to consider those decisions which are those of the Local Authority, it is useful to note the process Academies and Free Schools are required to follow. Attached, at appendix 1, is the guidance document produced for Academy Trusts to follow. In summary they are required to conduct a 'fair and open' consultation on proposed changes, and there is advice provided as to what a 'listening period' would be, although this is only advice and not a requirement. Following this single stage of consultation a business case is submitted to the RSC for a decision.
- 3.3 In Leeds, when we are working in partnership with Academies who wish to expand to meet an identified need for places, we require them to meet the same initial consultation requirements as would be necessary for a maintained school. This is to ensure that there is a consistency for stakeholders in their ability to engage in the consultation, ahead of any decision. Although the final decision on expansion is the RSCs, the Executive Board is asked for permission to commit capital funding to the proposal, and a consultation summary is provided. Where no capital funding is required then the local authority has no decision making process. A flow chart is provided at appendix 2 that sets out the stages of decision making.
- 3.4 Following the changes to our consultation process approved by Executive Board in 2014, where the local authority believe there is a need to bring forward any prescribed alteration the first stage is a Stakeholder Engagement Event. This event is run on the principles of Outcomes Based Accountability, and a wide range of data is provided to enable participants to be involved in determining the extent of the problem to be solved, offer their suggestions as to who else should be involved that might not already be, and their options for how to address the issue. Stakeholders typically include head teachers, governors, parents, elected members, local interest groups, academy and free school sponsors, Diocesan representatives and others partners who we are already aware have an interest in the area.
- 3.5 This initial event enables us to allow stakeholders to shape proposals from the outset. We feedback to stakeholders the options not being taken forward, with reasons for not progressing them. When we bring forward consultation on a proposal we are required to be clear, so that interested parties can clearly understand what we are consulting them on, however we do refer them back to the options that have been considered and not brought forward. This stage of 'informal' consultation includes plenty of opportunity for meetings with the school council, staff and governing body of the affected school/s, as well as ward member briefings and public meetings where all stakeholders are welcome to attend. In addition to any presentation that may take place officers are on hand to talk individually with people about the proposal and listen to their views. Written responses are also encouraged.
- 3.6 The first report to Executive Board summarises this consultation phase, and the responses to any concerns that may have been expressed, and following due consideration may seek approval to progress to the formal stage of consultation, where a statutory notice is published. This report is eligible for call-in.

- 3.7 There are some common themes that emerge in the majority of consultations at this first stage. Highways and traffic concerns frequently exist around schools at start and finish times, and it is understandable that residents, and others, will have concerns about how a proposal may exacerbate this issue. As part of every physical expansion of a building we conduct impact assessments and work closely with colleagues in highways and planning to understand the most appropriate way to mitigate any increases in pupil numbers. This is more comprehensively covered much later in the process during the separate planning application.
- 3.8 Full details of the building solution are not generally available during the first stages of consultation. Given the costs incurred in working up detailed plans this process generally follows on once we have listened to the initial views of consultees. We understand that people often feel unable to comment positively without understanding the detailed plans, however, there is the full planning application process when all stakeholders are once more able to engage in a consultation phase.
- 3.9 The other common themes are about the potential impact on a school, their improvement journey, the feel and ethos of a school and how it might be changed, whether the proposal is the right one for the area, the accuracy of the demographic information, and a range of more individual and personal reasons. The first paper to Executive Board summarises and seeks to address any concerns raised before permission is granted to move to the statutory notice phase. This next phase is the legal, or formal, phase of consultation.
- 3.10 Once a statutory notice is published there is a fixed timeline which must then be met. Within two months of the expiry date of the notice the decision maker must make their decision. Most statutory notices are for four weeks. Looking back now at prescribed alterations over the last 5 years, there have been over 40 proposals, six of which required SOAB to meet due to the receipt of objections during this statutory notice phase. This issue presented to March Executive Board was that any delay to presenting a final recommendation to the earliest possible Executive Board would result in a need to exempt the paper from call-in.
- 3.11 Referring to appendix 2 you will note that any decision not made within the two month deadline must then be passed to the Office of the Schools Adjudicator. School Adjudicators are separate from the DfE and appointed by the Secretary of State for Education. Therefore any alternative to the former SOAB must also be mindful of this timeline.
- 3.12 In appendix 3, are the actual objections that were received that triggered the meeting of SOAB since the introduction of the improved consultation process. Although at the time when SOAB was held these were publically available, under the General Data Protection Regulation (GDPR) they have been redacted to ensure individual identities are protected.
- 3.13 The objections received are similar, or identical, to those received in the first consultation phase. It is very rare to receive a new objection that raises points not already considered in the decision to publish the notice. Some points in relation to planning, highways and the proposed physical build are most appropriately considered at the planning application stage where there is, once again, consultation with stakeholders and when the local authority are in a more advanced stage enabling suitably detailed responses to be given, not available at the earlier stage.
- 3.14 Whilst all concerns are valid they represent individual perspectives, and the focus is naturally drawn to the small number of objections, rather than those who support the

proposal, or those who have chosen not to respond due to lack of concerns. It is therefore important to take a proportionate view of how those concerns are considered and the weight given to them at each stage.

### **Options:**

- 3.15 For decisions relating to all proposals relating to Free schools and academies, other than in the matter where funding is required from the local authority, there is no decision made locally. The RSC makes the decision in each case, and the same requirements from transparency and scrutiny of those decisions is outside of local authority influence. There is no statutory notice phase and therefore no equivalent opportunity for objections to be expressed.
- 3.16 Option 1: Scrutiny request that an extraordinary meeting be called on the same basis that SOAB would have been convened, on receipt of any objections. As explained previously the time take to convene the meeting this would be detrimental to the democratic process as all reports of this nature to Executive Board would need to be exempt from call in.
- 3.17 Option 2: Scrutiny request that an extraordinary meeting be called when an objection is received that would not reasonably be considered at a more appropriate stage in the future, and has not already been considered in a previous decision. Specifically where objections are in relation to planning, highways, or building matters they will be considered more fully and completely at the planning application stage, when the development of the built solution is sufficiently well developed that appropriately detailed answers can actually be given. Additionally this would acknowledge that a respondent may continue to hold a viewpoint that differs from that of the local authority, and that the Executive Board has already given due consideration to their points. The advice from the extraordinary meeting would then exempt the decision from call in, but the consideration of the extraordinary meeting would be included in a paragraph in the Executive Board report.
- 3.18 Option 3: The Executive Member for Learning discuss with the Chair of Scrutiny any objections received to gauge the level of the objections and identify situations that would benefit from greater scrutiny ahead of a final decision.
- 3.19 Option 4: Scrutiny note the significant discrepancy between local transparency in decision making, and that which takes place for Academies and Free Schools, and acknowledges that elected members have the opportunity to call-in decisions where they feel there are sufficient reasons for doing so, and that only in exceptional cases is the additional level of scrutiny necessary.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 There is extensive consultation and engagement that takes place when the local authority are considering bringing forward any proposal. At the initial Stakeholder Engagement Event all partners are invited to share the data and in the formation of ideas. From this event either the preferred solution will involve a Free School or Academy partner solution. In these cases the following consultation processes vary from those of the local authority and decision making sits with the RSC. There is no right of appeal or challenge.

4.1.2 Where the preferred solution is with a maintained school then the consultation and decision making process is set out in appendix 2. This includes the right for a final referral to the Office of the Schools Adjudicator by specific parties (Dioceses and governing body of affected school).

## **4.2 Equality and Diversity / Cohesion and Integration**

4.2.1 All proposals are subject to the Council's Equality and Diversity Scheme, and a screening document is completed for every recommendation made to Executive Board.

## **4.3 Council Policies and Best Council Plan**

4.3.1 School Organisation proposals contribute to the city's aspiration to be the Best Council, the Best City in which to grow up and a child friendly city. The delivery of pupil places through the Learning Places Programme, managed and co-ordinated by Children and Families and City Development, is one of the baseline entitlements of a child friendly city. By creating good quality local school places we can support the priority aim of improving educational attainment closing achievement gaps for children and young people vulnerable to poor learning outcomes. In turn, by helping young people into adulthood, to develop life skills, this proposal provides underlying support for the council's ambition to produce a strong economy and a compassionate city. A good quality school place also contributes towards delivery of targets within the Children and Young People's Plan such as our obsession to improve behaviour, attendance and achievement.

## **4.4 Resources and Value for Money**

4.4.1 Two of the difficulties with the former SOAB was securing membership and resources to facilitate the meetings. Should an alternative group be established then the proportionate use of resources requires consideration. In the future many decisions will be in respect of Academies, where there are fewer stages of consultation, and decisions taken outside of the local authority. For those decisions which are required to be taken by the local authority, where the process of consultation has been managed in line with legislation and local specification, the value for money of allocating further resources to additional scrutiny of such decisions should be considered.

## **4.5 Legal Implications, Access to Information and Call In**

4.5.1 One of the stated aims of legislation introduced in 2014 was to give schools more authority over decisions about their size and composition without being unduly restricted by local authority process. The process in Leeds complies fully with guidance and has the oversight of two separate Executive Board decisions to approve any proposal.

4.5.2 Creating an alternative advisory group to the former SOAB would lead to all final decision by Executive Board being exempt from call-in due to the legislative timeframes

4.5.3 Appendix 3 has been redacted to protect individual identities, and Scrutiny Board can read all but one of the objections that have been previously received.

## **4.6 Risk Management**

4.6.1 This section is not relevant to this report.

## **5 Recommendations**

5.1 Scrutiny Board is requested to:

- Note the current level of rigour within the existing process;
- Note the decisions that fall outside of local authority control and the significant discrepancy between local transparency in decision making and that which takes place for Academies and Free Schools; and
- Advise on the preferred course of action.

## **6 Background documents<sup>1</sup>**

6.1 None

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.