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London Borough of Hackney  
Town Hall  
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**Attention:** Cllr Bramble (Deputy Mayor and Cabinet Member for Education, Young People and Children's Social Care); Dawn Carter-McDonald (Interim Chief Executive); Philip Glanville (Mayor of Hackney); Mark Agnew (Governance Officer); Louise Humphreys (Head of Legal and Governance); Paul Senior (Interim Head of Education); Jacquie Burke (Group Director Children and Education).

**By e-mail only to:** [legalservices@hackney.gov.uk](mailto:legalservices@hackney.gov.uk); [governance@hackney.gov.uk](mailto:governance@hackney.gov.uk); [anntoinette.bramble@hackney.gov.uk](mailto:anntoinette.bramble@hackney.gov.uk); [paul.senior@hackney.gov.uk](mailto:paul.senior@hackney.gov.uk).

**Our ref:** 166988/SaveColvestone

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11 September 2023

**PRE-ACTION PROTOCOL LETTER FOR JUDICIAL REVIEW  
LETTER BEFORE CLAIM  
THIS LETTER REQUIRES YOUR URGENT ATTENTION**

Dear Madams and Sirs

**Potential legal challenge to the decision to put forward Colvestone Primary School for a statutory process for closure and “amalgamation” with Princess May School**

1. This is a letter before action sent in accordance with the pre-action protocol for judicial review.

**Claimant**

2. Colvestone Family and Staff Association, a legally registered charity, acting on behalf of Save Colvestone Primary School (“**Save Colvestone**”), a group of Colvestone parents and carers (“**the Proposed Claimant**”).



### **Proposed Defendant**

3. Hackney Council (“**the Potential Defendant**”).

### **Decision(s) to be Challenged**

4. The ongoing decisions to put forward Colvestone Primary School for the statutory process for closure and “amalgamation” with Princess May School, including but not limited to informal consultation carried out from 5 June – 16 July 2023 and the decisions made subsequent to the informal consultation to progress the statutory process.

### **Interested Parties**

5. (1) Colvestone Primary School; (2) The Governing Body of Colvestone Primary School (3) the Blossom Federation.

6. Should you consider that there are other third parties with a distinct interest who should be served as an Interested Party in the proposed proceedings, please provide us with their details and an explanation of their interest.

### **Factual background**

7. There is a **long and complex factual background**, but the salient points are these. Colvestone Primary School experienced a period of instability in 2021-2022, but from the Summer term of 2022, the School was working intensively with the Council to stabilise matters. There were a number of meetings from June 2022 – January 2023. Steps taken included the School deciding to partner with the Blossom Foundation (note that partnership with Princess May was rejected as an option) and a school resource management advisers (“**SRMA**”) audit of the School’s financial position. At no point during this period did the Council mention the potential for Colvestone Primary School to be closed or amalgamated.

8. On 30 January 2023, the Council’s School Estates met with the senior leadership of the School, unminuted, to have an initial conversation about possible steps being taken by the Council in relation to school closures, with an indication that Colvestone Primary met some of the criteria for consideration. A further meeting was held on 22 February, where “amalgamation” with Princess May School was proposed.



9. It should be clear that what was, and is, being proposed is the closure of Colvestone. The terms “merger” or “amalgamation” with Princess May only mean that parents/families are offered a place at that school. There is no actual merger, nor any amalgamation of staff or quality of education or ethos etc.
10. The selection criteria<sup>1</sup> identified by the Council for schools to be considered for closure were:
- (1) Schools most financially at-risk;
  - (2) Number of vacant places
  - (3) Physical size of schools and suitability of sites to host a merger (4) Geographic partnership options (such as the existence of other schools within walking distance)
  - (5) Whether new neighbourhoods and new-build estates will create significantly more need for school places in the future
  - (6) Current Ofsted grading and projected outcomes for pupils
  - (7) Community impact
11. In March 2023, the governors and leadership team of Colvestone Primary School opposed the school being considered for amalgamation or closure even at the initial stages of an informal proposal, on the basis that the school was in a unique position, different from the other schools under consideration. In particular they drew attention to the **financial stability of the School and stabilising roll, and that the partnership with the Blossom Federation, which had contributed to that stability, was in its early stages. It also drew attention to the high proportion of children at Colvestone on the SEND register.**
12. Despite this the Council moved to a pre-informal consultation. Save Colvestone prepared a detailed submission, in particular setting out how Colvestone Primary had delivered a surplus school budget for the year ending 2022/23 and projected an in-year surplus for the years ending 2023/24 and 2024/25; and that a survey of **73 households with children at the School indicated that 87% would not agree to their children going to Princess May School.** The Council (through Paul Senior) agreed that any representations made by 1 May would be considered in the preparation of the Briefing Report for the Cabinet meeting on 22 May on whether to go to the next stage. Save Colvestone’s detailed 63-page dossier was submitted

<sup>1</sup><https://education.hackney.gov.uk/content/primary-schools-potential-changes>



on Monday 1 May. The Council then erroneously suggested the material was submitted too late for inclusion. The Education Sufficiency and Estates Strategy – falling rolls Open Report (CE S190) (“**the Report to Cabinet**”), published on 12 May for consideration by the Council’s Cabinet, appended Save Colvestone’s representations. Initially the representations withheld from publication, but they were published on 19 May after challenge by Save Colvestone. However, the substance of the Report failed to address the majority of Save Colvestone’s points, failing either to challenge them, to adjust the proposals in light of them, or even to acknowledge them in any substantive form.

13. On 22 May, the Council’s Cabinet agreed to move on to the informal consultation stage. **The parts of the Report to Cabinet concerning Colvestone Primary School proceeded on the basis of a projection that 120 children from the School would move to Princess May, but without having carried out any survey of parents at the School. It contained a table purporting to set out the financial position at Colvestone, showing it to be in deficit, but did not provide any information from the three-year projected budget produced by the new Senior Leadership Team (provided to the Council in November 2022) or the independent school resource management advisers (“SMRA”) report, which affirmed the projections and identified further highly achievable savings on operating costs. These two reports confirmed both the financial viability of the school and its capacity to pay down the deficit.**
14. The Report to Cabinet considered expected demand for school places, **but focused on the short to medium term, including when considering whether planned new housing or regeneration would impact the demand.**
15. The Report to Cabinet **provided information about an air quality review which, when it went before the Cabinet, showed the 2021 NO<sub>2</sub> annual concentration at Colvestone Primary School as 23µg/m<sup>3</sup>, and at Princess May 1 as 23µg/m<sup>3</sup>, and Princess May 2 as 32µg/m<sup>3</sup>.** However, this second figure was recorded in the Cabinet’s Decision Document as 20µg/m<sup>3</sup>, causing concern that the Cabinet had not appreciated the true air quality impact on children moving to Princess May School. When Save Colvestone pointed out the error, the Cabinet Decision Document was amended.



16. The informal consultation ran from 2 June to 16 July 2023. The consultation document described the consultation as considering “a proposal to amalgamate (‘merge’) Colvestone Primary School with Princess May Primary School. If agreed, the amalgamation will result in a single primary school **being established** on one site for 60 pupils in each year group.” (emphasis added). It should be noted that this suggests the establishment of a new school, which is not possible as any new school is automatically a free school under 'free school presumption', as warned in the Strategic Plan; Princess May School is already “established”.
  
17. The document did explain that “amalgamation” meant closing Colvestone on 31 August 2024 and Princess May school “providing spaces for displaced children”, “if that is what the parents prefer for their children”. **It did not explain that, if fewer than the 120 projected children moved from Colvestone to Princess May, then Princess May is also at risk of closure, or that, even if 120 children did transfer, there would still be approximately a 23% vacancy at Princess May.**
  
18. The consultation document provided general information about the financing of schools, stating that “[s]chools with unfilled places lose £6,484 per place every year”, but did not provide, even in high-level form, any of the financial information verified by the SMRA report showing Colvestone School to be financially viable. **It did not address SEND at all.**
  
19. Save Colvestone provided a detailed submission on 16 July 2023. This referred again to two surveys of parents at Colvestone, **which showed that 95.7% of parents surveyed did not include Princess May in any of their six preferences when selecting a school, and that 87% would not send their children to Princess May, with a further 6% undecided.**
  
20. Save Colvestone’s consultation response identified both the key benefits and the key risks of closing Colvestone and included information on:
  - (1) the financial position of Colvestone Primary School;
  - (2) future demand, including in light of the adopted Local Plan, the draft Dalston Plan and the fully-funded 21<sup>st</sup> Century Street on Colvestone Crescent;
  - (3) the air quality impact of closing the school and offering provision at Princess May School; and



(4)the high number of children with SEND at Colvestone and the risk of significant cost if children have to be sent out of the borough to private schools.

21. It should be noted that the process of pre-informal consultation and informal consultation **has already harmed Colvestone Primary School**. The threat of closure is enough to cause pupils to move or to change parental school preferences. Save Colvestone is aware of **at least one parent who applied for a place at Colvestone, only to be advised by Council officials that the school was closing**. The extent of **artificial suppression of pupil numbers is difficult to gauge**. Save Colvestone considers that moving Colvestone School forward in the process and issuing a formal statutory notice would be even more damaging to the School.

### **Proposed Grounds of Challenge**

22. Save Colvestone considers that the Council's decision-making regarding the proposed "amalgamation" of Colvestone Primary School with Princess May School is unlawful for the following reasons:

- (1) Failure to take into account the relevant statutory guidance;
- (2) Failure to comply with the **public sector equality duty**;
- (3) Failure to take **material considerations into account**;
- (4) Failure to conduct a lawful informal consultation.

### **Proposed Ground 1 – Statutory Guidance**

23. When making decisions about closing Colvestone Primary School, the Council is required to have regard to the relevant statutory guidance – "Opening and closing maintained schools – Statutory guidance for proposers and decision makers" (January 2023) ("**the Statutory Guidance**"). Where there is such a duty, the decision-maker must proceed on a proper understanding of what the guidance requires. The decision-maker is also obliged to take the guidance into account and to act in accordance with the guidance, unless clear and cogent reasons are given for departing from the guidance: see, eg, *R(Britwell Parish Council) v Slough Borough Council* [2019] EWHC 988 (Admn) at §§ 27 and 33; *R(TG) v Lambeth LBC* [2011] EWCA Civ 526; [2012] PTSR 364 at §17 per Wilson LJ.

24. The Council proposes to close the School because of the fall in predicted demand and there are surplus places elsewhere in the local area which can accommodate the displaced pupils. This reason is addressed explicitly in the Statutory Guidance,



which requires the Council to consider whether there is predicted demand “**in the medium to long term**”. It is understood that is the reason on which the Council is relying.<sup>2</sup>

25. The Council has consistently considered predicted demand on the basis of short to medium term, rather than medium to long term. This is particularly apparent when the Council considered the demand from planned new housing in the borough (addressed further below). The Report to Cabinet explicitly considers this in relation to “demand in the short to medium term”.
26. While there is no definition in the Guidance of what “medium term” and “long term” mean, the Council’s other relevant documents<sup>3</sup> define medium term as 5-10 years and long term as 10-15 years.
27. The Council has either failed to understand the Statutory Guidance, or is departing from the Guidance but without giving clear and cogent reasons for that departure.

### **Proposed Ground 2 – Public Sector Equality Duty**

28. The public sector equality duty (“**PSED**”) is laid down in section 149 of the Equality Act 2010. The duty is to have “**due regard**” to the relevant matters, and although this does not require the achievement of particular outcomes, it is not “a question of “ticking boxes: Aikens LJ, giving the judgment of the Divisional Court, in *R(Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin). The duty must be “exercised in substance, with **rigour, and with an open mind**. There is no duty to make express reference to the regard paid to the relevant duty, but reference to it and to the relevant criteria reduces the scope for argument. The duty **must be fulfilled before and at the time when a particular policy is being considered. It must also be fulfilled by the actual decision-maker; knowledge of the duty by another officer is not sufficient: see *R(Danning) v Sedgemore DC* [2021] EWHC 1649 (Admin) at §55.**
29. An important evidential element in the demonstration of the discharge of the duty is the recording of the steps taken by the decision maker in seeking to meet the

<sup>2</sup> See section 3.5.2 of the Report to Cabinet. The Council has not identified any other reason, for example, that the School is not considered viable. If the Council is not relying on the reason stated in the Guidance, but on some other reason, that should be made clear when responding to this letter. <sup>3</sup>

<https://hackney.gov.uk/dalston-spd#happen>;

[https://drive.google.com/file/d/1JKYYxGAtynP0NsxumGUAq\\_tR70Lg90\\_a/view](https://drive.google.com/file/d/1JKYYxGAtynP0NsxumGUAq_tR70Lg90_a/view) eg pg 146.



ESTELLE DEHON K C  
PUBLIC ACCESS BARRISTER S

statutory requirements: *R (BAPIO Action Ltd) v Secretary of State for the Home Department*[2007] EWHC 199 (QB) (Stanley Burnton J (as he then was), confirmed by McCombe LJ in *Bracking v Secretary of State for Work and Pensions*[2013] EWCA Civ 1345, [2014] EqLR 60 at §25.

30. The importance of the PSED was emphasised by the Court of Appeal in *R(Bridges) v Chief Constable of South Wales* [2020] EWCA Civ 1058 at §176ff. The Court held that the duty includes a public body taking reasonable steps to obtain information about whether the decision-making would result in direct or indirect discrimination on the basis of protected characteristics.
31. The duty to comply with the PSED is a continuing one.
32. The Council carried out an undated Equalities Impact Assessment (“EIA”), which was provided as Appendix L to the Report to Cabinet. This demonstrates that the Council failed to comply with the PSED in at least two regards relating to Colvestone School.
33. First, although the EIA addressed children with special educational needs and disabilities (“SEND”) in general, it failed to consider the specific position at Colvestone School, which has a high percentage of children with SEND: 17.31% of pupils have special educational needs (the national average is 13.2%) and 8% of pupils have an education, health and care plan (“EHCP”), meaning that 25% of children have SEND. The 25% figure was confirmed to the Council by the School in March 2023. The EIA only lists the pupils with an EHCP, indicating that the Council failed to consider the true extent of the impact.
34. Furthermore, the EIA suggested that the outcome for pupils with EHCPs “may be improved”, because “the educational quality of any school they move to is graded either ‘Good’ or ‘Outstanding’ by Ofsted”, which ignores the fact that Colvestone is already graded ‘Good’.
35. Second, **the Council has wholly failed to factor air quality impact into the PSED analysis.** Negative air quality impacts are known to harm those who are more vulnerable, in particular, children. **Hackney’s own Air Quality Action Plan 2021- 2025** identifies school communities as amongst the most susceptible groups to the





ESTELLE DEHON K C  
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serious health impacts of air pollution within its strategy to improve air quality throughout the borough.

36. Air pollution levels are significantly higher at Princess May than at Colvestone. Princess May is on a main road (the A10); Colvestone is on a quiet back street, part of a fully-funded re-greening project which will further improve air quality, meaning that closing Colvestone will inevitably expose children to poorer air quality.

### **Proposed Ground 3 – Material Considerations**

37. There are a **number of considerations which are obviously material to the Council’s decisions which do not appear to have been taken into account.**
38. First, the relevant financial information does not support Colvestone’s inclusion, even at pre-consultation stage. The only financial information that the Council has in relation to the financial position at Colvestone is the three-year projected budget produced by the new Senior Leadership Team (provided to the Council in November 2022) and the SMRA report, which affirmed the projections and identified further highly achievable savings on operating costs. Given that these two reports confirm both the financial viability of the School and its capacity to pay down the deficit, it is unclear on what basis the Council has concluded that Colvestone is one of the schools most financially at risk, or has “a budget deficit in top 10 schools raising the most financial concern” (per pg 42 of the Report to Cabinet).
39. Second, planning-related considerations. As the Report to Cabinet tacitly acknowledges, planned future housing and regeneration is obviously material to the predicted demand for the School. The Council has dismissed any short to medium term planning matters that weigh against the proposed school closures, but in so doing has failed to take into account the Colvestone 21<sup>st</sup> Century Street, which is a fully-funded, short-term (ie 1-2 year) initiative focused on Colvestone Crescent. The adoption of the street on which Colvestone Primary School sits as the Borough’s first permanent play street plainly has the potential to increase the number of families drawn to the area, requiring a proper medium to long term analysis of the expected child yield from the development. The Council has not undertaken any such analysis.



ESTELLE DEHON K C  
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40. As set out above, the Council has only considered the impact of proposed new housing in the short to medium term (and has not even done that lawfully). The Council does not appear to have taken any account of the fact that the Local Plan LP33 focusses growth in Hackney predominantly in the two designated town centres of Dalston and Hackney Central. The Council plans to deliver a minimum of 1,330 homes a year up to 2033 across the Borough, maximising the supply of genuinely affordable housing with up to 2,000 homes for Dalston. In Dalston, the majority of the allocated sites are clustered around Colvestone Crescent, some in very close proximity to Colvestone Primary School.
41. **The draft Dalston Supplementary Planning Document (May 2021), to which weight must be given as an emerging plan in late stages of preparation, makes clear that there is a particularly high need for 3 bedroom (family) housing and that key to the vision for Dalston is child-friendly planning.** Approximately 200 affordable family homes (plus others at market rates) are planned in close proximity to the School. All of this is plainly relevant to the medium and long term predicted demand for Colvestone Primary School; none of it appears to have been taken into account. Instead, the Council has undertaken a generic consideration of planning matters, which ignores the specific considerations relevant to Colvestone.
42. Furthermore, the Council does not appear to have taken into account the potential **negative impact of the closure of Colvestone on proposed future housing provision and regeneration in Dalston.** The School is key infrastructure, the ramifications of the removal of which are not addressed by generic reference to the need for developer contributions when infrastructure is not present. **The whole point of concentrating development in Dalston is that some of the requisite the infrastructure is already there.**
43. Third, SEND-related considerations. As set out above in relation to the failure to comply with the PSED, the Council has **failed to take into consideration in relation to Colvestone specifically, the high proportion of children with SEND. The school has implemented a SEND strategy which has excellent feedback from parents/carers and staff. Parents chose a 1 form entry school for their children with SEND needs as this is shown to support children's emotional and wellbeing needs. This is relevant both to the medium to long**

**term demand for places at Colvestone and to the likelihood that Colvestone parents will not choose to take up places at Princess May.**



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PUBLIC ACCESS BARRISTER S

44. Colvestone's integrated provision and current surplus capacity also has the potential to save the council money otherwise spent sending children with SEND to independent / private schools outside of the borough at a cost of between £35-70,000 per pupil per year. Given that potential financial losses appear to be driving the Council's decision-making, this is further material consideration weighing against the closure: keeping Colvestone open has clear financial benefits; closing Colvestone risks the Council having to find yet more expensive out-of-borough SEND provision.
45. Fourth, community impact. Colvestone is the last surviving Birkbeck school - a historical and socially important part of London and Hackney's past. It is also by Ridley Road market, one of the most historic markets in London. It is also a key part of the Colvestone Crescent 21<sup>st</sup> Century Street. The Council does not appear to have researched or obtained any information about the potential negative community impact of the closure of Colvestone School, nor does it appear to have taken these matters properly into account.

#### **Proposed Ground 4 - Consultation**

46. If a public body chooses to consult, it must do so lawfully. The basic requirements for a lawful consultation process were established in the case of *R v Brent London Borough Council, Ex p Gunning* (1985) 84 LGR 168 and are known as either the *Gunning Principles*, or the *Sedley Principles*, as Hodgson J set out and accepted the submissions of Mr Sedley (as he was then):
1. Consultation must be at a time when proposals are still at a formative stage.
  2. The proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response.
  3. Adequate time must be given for consideration and response.
  4. The product of consultation must be conscientiously taken into account in finalising any proposals.
47. The Supreme Court in *Moseley* stated at §25 that it is "hard to see how any of [Sedley's] four suggested requirements could be rejected or indeed improved".



ESTELLE DEHON K C  
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48. The *Gunning* Principles are reflected in the Cabinet Office's 'Consultation Principles 2018',<sup>4</sup> to which the Court referred in *R(British Blind and Shutter Association) v SSHCLG* [2019] EWHC 3162 (Admin) at §31.
49. There is considerable case law on each of the four requirements. The focus of this proposed challenge is on the first and second requirements
- (1) formative stage: it is not a formative stage where an option of central significance has already been excluded<sup>5</sup> or where a definite solution has evolved;<sup>6</sup>
  - (2) sufficient reasons: a consultation document must present the issues in a way that facilitates an effective response;<sup>7</sup> the scope of the consultation must be clear<sup>8</sup> and non-disclosure of information can, depending on the circumstances, make the consultation unlawful.<sup>9</sup>
50. **The informal consultation failed to comply with these requirements in a number of ways. First, the consultation did not take place at a formative stage, but at a time when a "definite solution" had evolved. This is evidenced by the following:**
- (1) The Report to Cabinet set out efficiencies and innovations which could be implemented to manage and balance budgets (pg 37), then claimed a far more limited set of options has been tried (pg 38), stating that further details would be in the school specific section. These measures are not addressed in the school specific section (pgs 46-51), nor are they addressed in the 'Details of Alternative Options Considered and Rejected' section (pgs 57-58), where 'doing nothing' or 'alternate mergers' are the only other options on the table;
  - (2) The fact that the consultation only concerned school closures and did not invite consideration of alternative models and options to reduce vacancies in the local school system; and
  - (3) Officials on the Hackney Council Admissions and Pupil Benefits Team Helpline told a parent explicitly that Colvestone School was closing.

<sup>4</sup> <https://www.gov.uk/government/publications/consultation-principles-guidance>. <sup>5</sup> *R(Montpeliers & Trevors Association) v City of Westminster* [2005] EWHC 16 (Admin) at §§25-29. <sup>6</sup> *R v North East Devon Health Authority; ex p Pow* (1998) 1 CCLR 280.

<sup>7</sup> *R(Royal Brompton and Harefield NHS Foundation Trust) v Joint Committee of Primary Care Trusts* [2012] EWCA Civ 472 §9. See also *Holborn Studios Ltd v Hackney LBC* [2020] EWHC 1509 (Admin) at §71. <sup>8</sup> *R(Jones) v Denbeighshire CC* [2016] EWHC 2074 (Admin) at §§70-74.

<sup>9</sup> See the considerations set out in *R(Law Society) v Lord Chancellor* [2019] 1 WLR 1649 at §73.



ESTELLE DEHON K C

PUBLIC ACCESS BARRISTER S

Page 1 2 of 1 6

51. Second, the consultation was in breach of the second *Gunning* principle, for the following reasons:

- (1) **The consultation documentation and surrounding information did not present the issues in a way that facilitated an effective response**, as they caused confusion about the “amalgamation” of the schools and failed to make clear (a) that both Colvestone and Princess May schools could close, depending on parental choice, and (b) Colvestone staff would not be “merged” into Princess May; they would have to re-apply, only if there are vacancies. This confusion arguably meant the scope of the consultation was unclear;
- (2) The consultation document also **did not facilitate an effective response** simply providing an open-ended invitation to comment on the proposals, rather than giving guidance as to the information that would be helpful or needed to develop proposals for the next stage of the process. This failure has recently been highlighted by the Council’s own Children and Young People Scrutiny Commission;<sup>10</sup>
- (3) **The scope of the consultation was also unclear as regards the timeframe that consultees should be considering**. As set out above, in light of the Statutory Guidance, that is a medium to long term timeframe (ie 5-10 yrs to 10-15 yrs). No indication was given of this at all;
- (4) **Crucial information about the true financial position of Colvestone was withheld**, meaning that consultees could not properly engage with the question whether Colvestone was financially viable. Instead, the consultation focused on alleged revenue lost to the Council. These failures prejudiced consultees. They were criticised by the Council’s Children and Young People Scrutiny Commission. Both the provision of proper financial information and giving consultees a proper understanding of the financial questions on which they were being asked to provide views were crucial to the Council being able to take a decision in line with the criteria it

identified for determining which schools to close;

- (5) The consultation documentation was not provided in languages other than English, despite the Council being aware that support was needed in multiple languages and platforms; and

<sup>10</sup> <https://hackney.moderngov.co.uk/documents/s84677/Final%20Cllr%20Bramble%20-%20School%20Estates%20Strategy%20-%20Google%20Docs.pdf>.



ESTELLE DEHON K C  
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Page 13 of 16

- (6) The Report to Cabinet identified that a wide range of stakeholders would be included in the consultation, including “all residents”, but that group was excluded from the stakeholders to whom the consultation document was sent.

52. Accordingly, the consultation was legally flawed and does not provide a lawful basis for the Council to move to the next stage as regards Colvestone School.

### **Details of Information Sought**

53. The Council is required to make full and frank disclosure in judicial review proceedings. Save Colvestone has already made a freedom of information request to the Council which has not been answered satisfactorily. The Council is asked to disclose the information sought, namely the original, amended 1906 and subsequent Deeds of the Colvestone Primary School building, receipt of which was taken by the Council in 1990.

54. On 27 July 2023, Save Colvestone made a request to Councillor Garbett for information about reception intake and allocations. The Council is asked to provide the information sought, details of which are annexed to this letter.

### **Details of the Action the Council is Expected to Take**

55. In light of the above apparent errors of law, Save Colvestone asks that the Council removes Colvestone Primary School from the proposal to close schools.

56. The Council is asked to respond to this letter in writing within 14 days (ie by 25 September 2023) so that Save Colvestone may consider whether further legal action is necessary.

### **ADR Proposals**

57. We would welcome any proposals to engage on the substantive issues raised by the draft legislation so as to resolve or narrow the dispute.

### **Other applications**

58. If the claim proceeds the Proposed Claimant will apply for a protective costs order (PCO) pursuant to CPR 45.43 on the basis that the claim is an environmental matter in light of the air quality and human health impacts raised: *Venn v Sec State*



Page 14 of 16

ESTELLE DEHON K C  
PUBLIC ACCESS BARRISTERS

*CLG* [2015] 1 WLR 2328. If you disagree that this is an Aarhus matter or with the making of a PCO please give your reasons.

59. If it is not accepted that the Proposed Claimant is entitled to Aarhus costs protection, then the Proposed Claimant will invite the Court to make an order capping the parties' costs liability in accordance with its power at section 88(6) of the Criminal Justice and Courts Act 2015.

### **Details of Legal Advisors Dealing with this Claim**

#### **60. Counsel**

Estelle Dehon KC  
[edehon@cornerstonebarristers.com](mailto:edehon@cornerstonebarristers.com)

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DX: LDE 316 (Chancery Lane)

### **Address for Reply and Service of Court Documents**

61. You are requested to respond by email to ensure we have your response in a timely manner. Please send your response to all the following e-mail addresses: •

[edehon@cornerstonebarristers.com](mailto:edehon@cornerstonebarristers.com)

- [colvestonesos@gmail.com](mailto:colvestonesos@gmail.com)
- [fsacolvestone@gmail.com](mailto:fsacolvestone@gmail.com)

Yours sincerely

Estelle Dehon KC

Cc: Colvestone Primary School ([office@colvestone.hackney.sch.uk](mailto:office@colvestone.hackney.sch.uk)); Rosie Condon, Colvestone Chair of Governors ([rosiecondon.gov@gmail.com](mailto:rosiecondon.gov@gmail.com)); Jatin Shamji, Blossom Federation ([jshamji@blossom.hackney.sch.uk](mailto:jshamji@blossom.hackney.sch.uk)).



Page 1 5 of 1 6

ESTELLE DEHON K C  
PUBLIC ACCESS BARRISTER S

### **Annex: Reception Intake and Allocations Information Sought**

1. For the 2023 Reception intake, for each of the individual applications that included Colvestone on their list of preferences, please inform the Proposed Claimant: a. at which place (number) on the preference list Colvestone was placed b. which preference (number) was the school offered by Hackney Education to the applicant.
2. For the 2022 Reception intake, for each of the individual applications that included Colvestone on their list of preferences, please inform the Proposed Claimant: a. at which place (number) on the preference list Colvestone was placed b. which preference (number) was the school offered by Hackney Education to the applicant.
3. For the 2021 Reception intake, for each of the individual applications that included Colvestone on their list of preferences, please inform the Proposed Claimant:: a. at which place (number) on the preference list Colvestone was placed b. which preference (number) was the school offered by Hackney Education to the applicant.
4. Also, please provide the full postcodes of each of the allocations made to the following schools for Reception intake in the years 2021 and 2022 (and 2023 if available):

Halley House  
Mossbourne Parkside  
Princess May  
St Matthias  
De Beauvoir  
Holy Trinity CofE  
Our Lady and St Josephs





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**PUBLIC ACCESS BARRISTER S**