

Legal and Governance Services

Louise Humphreys
Interim Director of Legal, Democratic and
Electoral Services

London Borough of Hackney
3rd Floor, 1 Reading Lane
London
E8 1GQ

Tel: 020 8356 4527

Email: lucinda.bell@hackney.gov.uk

Our Ref: TLT3D/010/LB1

Your Ref: 166988/SaveColvestone

Date: 25 September 2023

Ms Estelle Dehon KC
Cornerstone Barristers
By email only: edehon@cornerstonebarristers.com; fsacolvestone@gmail.com;
colvestones@gmail.com

25 September 2023

**RESPONSE TO JUDICIAL REVIEW PRE-ACTION
PROTOCOL LETTER DATED 11 SEPTEMBER 2023**

Dear Sirs,

We refer to your letter before claim dated 11 September 2022. This letter is a formal response to that letter and is set out in accordance with the Pre-Action Protocol for Judicial Review under the Civil Procedure Rules.

The proposed claim is denied in its entirety.

THE CLAIMANT

We note the details you have provided.

FROM

The Council's legal representative for this proposed claim is the Interim Director of Legal, Democratic and Electoral Services, Chief Executive's Directorate, London Borough of Hackney, 1 Reading Lane, London E8 1GQ.

The people to contact in relation to this proposed claim are –

- Lucinda Bell - lucinda.bell@hackney.gov.uk
- Josephine Sterakides - Josephine.sterakides@hackney.gov.uk

REFERENCE DETAILS

Our reference details are at the top of this letter.

THE DETAILS OF THE MATTER BEING CHALLENGED

We note the manner in which you seek to characterise the decision. As you will know, no decision has yet been made as to whether or not the proposals will proceed to the stage of publication of statutory proposals. If a decision is made to so proceed, there would then be a period of representations of four weeks, in which your clients and others can make all representations they wish to make. Only after that representations period is complete would a decision be made on the proposals.

No doubt your clients would wish to use their full energies to make detailed representations during the important period of representations; if there is one.

We repeat that no final decision on the proposals has been made, and none would be made prior to consideration of all representations.

RESPONSE TO THE PROPOSED CLAIM

As your clients know, the possible proposals include a proposal to close Colvestone Primary School from September 2024, while at the same time guaranteeing all children a place at Princess May Primary School if they want it. This occurs across a background in which the number of primary aged children joining reception classes in Hackney primary schools peaked in 2014/15 and has been in steady decline since, a trend observed across London and most prevalent in inner-London boroughs. School funding is primarily determined by the number of children on roll, and falling rolls equate to reduced funding to deliver education across the borough. Despite removing 375 reception places across Hackney schools between 2019 and 2023, the projections still indicate a steady increase in surplus reception places from 19% in 2023/24 up to 23% in 2025/26.

We are aware that there is significant local opposition to the proposals as a whole, and in particular to the proposal to close Colvestone. However, on the best information available to us, there are not enough children in the borough and neighbouring areas seeking places at Hackney primary schools. All the reception places at all 58 primary schools in Hackney were required just 9 years ago to meet our statutory obligations and offer all residents a place. Rapid and sustained decline in the number of children joining our primary schools mean that they are no longer filling up. Hackney's schools currently have

over 600 empty places in Reception classes alone (21% surplus). The Council aims to have between 5 and 10% surplus. The number of children projected to need places in Reception over the coming years shows that, on the projected figures we have, without reducing the number of schools in the borough, we will continue to have over 550 vacant spaces (20%+ surplus) until at least 2030.

High vacancy rates mean that schools become financially unviable over time. A school's funding is based on the number of children on roll, so schools with lots of vacancies have a smaller budget than schools that are full, but they carry the same financial, educational and wellbeing responsibilities to their children, families and staff. As an example, in 2022/23, for every surplus place that a maintained primary school carries, it lost on average £6,484 per surplus place. For a one form entry school carrying 33% surplus places in every year group (10 empty seats in a class of 30), the school would be losing out on a potential £453,880 additional income, with no change to the number of class teachers, who represent the primary expense in school budgets. In this situation schools are forced to use their surplus funds or go into deficit to ensure the quality of education for Hackney children is maintained. Over two thirds of Hackney's maintained schools, or the federations they form part of, are predicting they will over-spend by the end of the 2023/24 financial year.

To avoid going into deficit, or to bring a school's deficit back under control, school governors are forced to make difficult decisions about whether to reduce the number of teachers or teaching assistants, support staff, school leaders, put off investment or maintenance in school building and equipment or find other savings, all of which impacts negatively on the quality of education and school experience for Hackney children and staff.

The Council is financially liable for any maintained school deficits, and must decide each year whether to continue to fund a school in deficit. When a maintained school closes the Council is responsible for the debt carried by the school at the point of closure. This also applies when schools faced with financial challenges convert to academies. If the Council does not take action to reduce the number of primary schools to align with the current and projected demand we knowingly take on increased financial burden and responsibility at a time when we are required to find £57m in savings over the next 3 years. The longer the Council delays taking action, the greater the financial burden it will inherit.

Further measures to address falling rolls are likely to be required in the coming years to bring the primary school estate in line with current and projected demand. If taken forward, the proposals outlined in this report would begin to address the issue of falling rolls by removing 90 reception places; however, in isolation, this is unlikely to resolve the problem and, based on current projections, further action to bring surplus reception places under 10% is likely.

On this basis the Council will continue to work together with our schools to review and adjust future plans in line with the priorities outlined in the Education Sufficiency and Estates Strategy to bring surplus reception places to within a sustainable range (ie. 5-10%).

It is believed that a merger of Colvestone with Princess May Schools would create a stronger educational establishment. It is anticipated that Princess May would benefit from increased income and financial stability through higher numbers of pupils on roll. Managed effectively the school could benefit from more robust resourcing and could positively impact academic opportunities, access to specialised teachers and wider range of extracurricular activities and clubs. A larger student body can provide pupils with a more extensive and diverse peer group, promoting social skills and cultural awareness. It is believed the proposed merger could, with the engagement of parents and school leaders, foster a sense of community among parents and pupils from both schools.

As to the specific grounds of challenge you have indicated, these lack merit.

First, we question the utility of bringing a claim at this stage. As we have noted, no final decision on the proposals has been made, and none would be made prior to consideration of all representations. Your clients still have considerable opportunities to input into this process further, and to raise the points you have raised in your letter, on issues for which your clients feel the Council may have got things wrong. It would be surprising if your clients did not take up that opportunity, should the proposals go to a period of representations.

Our client does not accept that it has misunderstood statutory guidance as you claim. The particular passage you quote does not have the effect claimed by your clients. In any event demand and other matters were considered on the medium to long term, and for such periods as reliable information is available to the Council.

We do not understand the claim to breach of the public sector equality duty. Consideration has been given to equalities matters throughout the process, including through a detailed equalities impact assessment. The specific fine-grained points of detail you raise on the equalities impact assessment go nowhere near demonstrating a breach of the public sector equality duty. In any event, section 149 is not a duty to compile equalities impact assessments, as you will know.

The points made under the heading “Material Considerations” raise no more than disputes as to the merits. That is particularly inappropriate in circumstances where no decision has yet been made as to the proposals. The right course is to raise these issues as part of the period of representations; if there is one.

The complaints regarding “consultation” are similarly inappropriate. If your clients have concerns they wish to raise, then the appropriate avenue to raise them is through the period of representations; if there is one.

DETAILS OF ANY OTHER INTERESTED PARTIES

We are not aware of any interested parties.

ALTERNATIVE DISPUTE RESOLUTION PROPOSALS

The appropriate course is for your clients to participate fully in any forthcoming period of representations, if there is one.

RESPONSE TO REQUESTS FOR INFORMATION AND DOCUMENTS

You have requested the original, amended 1906 and subsequent deeds of the Colvestone Primary School building, as well as very detailed information on reception and intake allocations. We currently do not understand the relevance of such deeds and intake numbers to any of the grounds you have raised, or indeed to any potential judicial review claim. We would be grateful if you could assist with that. On the latter, the Council has already provided a great deal of detailed information regarding numbers. We have difficulty seeing what is missing from the information that has been provided. Please kindly assist with our understanding of this, so we can review the matter further.

OTHER APPLICATIONS

It is not accepted that the Proposed Claimant is entitled to Aarhus costs protection. Further details will be provided should the matter proceed.

ADDRESS FOR FURTHER CORRESPONDENCE AND SERVICE OF COURT DOCUMENTS

Please correspond using the details on page 1 of this letter.

Yours faithfully,



Hackney Legal Services

