

DELEGATED DECISION

BY THE PORTFOLIO HOLDER FOR SCHOOLS

Proposed expansion of Fernwood Primary School, Wollaton

Legal observations

The school organisation regime is set out in the Education and Inspections Act 2006 (“EIA”), regulations made under the EIA and guidance made by the Secretary of State, both statutory (using powers in the EIA) and non-statutory.

Under section 19 of the EIA, a local authority is required to publish a proposal to make a prescribed alteration to a maintained school. In essence, a prescribed alteration is one designated as such by regulations. Currently, the relevant regulations are the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 (“the Prescribed Alterations Regulations 2013”).

The proposal referred to in this delegated decision form: to expand Fernwood Primary School (“Fernwood”) by increasing the number of pupils to be accommodated from a 840 place primary school to a 1,050 place primary school initially estimated for completion by September 2017 would be a prescribed alteration because it entails an enlargement of the premises of Fernwood, which would increase the capacity of Fernwood by more than 30 pupils and by 25 per cent or more or by 200 pupils or more.

Whilst the school organisation regime no longer has a ‘pre-publication’ consultation period, in public law terms such consultation is advisable. Indeed, this is reflected in the current statutory guidance entitled *School Organisation Maintained Schools Guidance for proposers and decision-makers* (January 2014) which states at paragraph 10: “Although there is no longer a prescribed ‘pre-publication’ consultation period for prescribed alterations, there is a strong expectation on schools and LAs to consult interested parties in developing their proposal prior to publication as part of their duty under public law to act rationally and take into account all relevant considerations...” Therefore, it is advisable that the proposal referred to in this delegated decision form is consulted upon before being published.

Moreover, whilst it is understood that the proposed date of completion for the proposal can only currently be estimated as September 2017 because this is subject to design plans, it is advisable if this proposal is to be taken forwards past the informal consultation stage that, if possible, a clearer implementation date is then proposed. This is because the publication stage of the school organisation regime requires a proposer to state when the proposal would be implemented. Legal advice on this, including whether the proposal should be presented with a proposed implementation date in stages or as conditional on specified event(s), should be sought at an early stage.

Lastly, it is advisable that Human Resources (“HR”) and legal advice is taken in relation to the HR, employment law and commercial law ramifications of the proposals here.

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2 September 2015
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