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FIRST CLASS

Treasury Solicitor
One Kemble Street
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FAO Mr Tom Bullmore

Our Ref: VMG(LW)/JH

Date: 30 July 2013

Dear Sir

North Tyneside Council v Secretary of State for Education and Others – pre-action correspondence in respect of the Kings Priory Academy Proposals

Further to the pre-action correspondence in this matter, this letter is copied to the proposed Interested Parties.

In a pre-action letter dated 18 July 2013, the Authority raised the following five grounds of challenge to the Secretary of State's decision of 5 July 2013 to enter into a funding agreement and proceed with the proposal for Kings Priory Academy:

- (a) That the Secretary of State had failed to comply with his statutory duty to have due regard to the equality implications of this particular proposal;
- (b) That the consultation process had been flawed because the Governing Body of Priory School and the proposed sponsor did not consult on the Kings School's financial situation or on the Secretary of State's intention to fund its loan and overdraft. Given that the Secretary of State only has the power to enter into a funding agreement if there has been a statutory consultation, his decision was unlawful;

- (c) That the Secretary of State had failed to take into account the impact of the proposal on maintained schools in the area, which he was required to do by statute;
- (d) That it was irrational to conclude that the proposal amounted to good value for money, given the surplus school places across the local authority's area; and
- (e) That the cumulative impact of the above grounds was that no reasonable Secretary of State would have decided to proceed with the Kings Priory proposal in these circumstances.

The Authority initially welcomed the Secretary of State's decision of 25 July 2013 to take a fresh decision. However, as you are aware, it was surprised and concerned that the Secretary of State was able to take that fresh decision by 10.30 on 26 July 2013, given the amount of further material that needed to be collected and taken into account in order to consider the matter lawfully.

The Secretary of State provided the Authority with his reasons in a letter from Lord Nash dated 26 July 2013 and sent on the Secretary of State's behalf. The Authority notes that the Secretary of State has decided, again, to proceed with the proposal for Kings Priory Academy and has approached the public sector equality duty by considering the impact of these particular academy proposals on local children.

In the equality impact assessment the Secretary of State acknowledges that "*The creation of the academy is expected to result in lower pupil numbers (and hence finances / viability) at neighbouring schools who will have fewer pupils as a result, at least in the short term – particularly Marden High. The analysis above suggests that pupils with SEN and probably therefore with the protected characteristic of disability) and non-Christian pupils are likely be over-represented at these schools compared to Kings Priory, and there could therefore be some adverse effect on these groups.*" The Secretary of State has now accepted that disabled children and non-Christians might be disproportionately over-represented in schools (such as Marden) with falling rolls, and therefore they would be disproportionately affected if this were to lead to a poorer quality of education as a result. He has also accepted that "*falling rolls make it harder for schools to be financially viable and can have consequent impacts of reduced staffing and a reduced curriculum offer: unless carefully managed, this can lead to a poorer education for pupils*".

The Authority continues to have significant concerns about the decision which it hopes can be resolved without litigation.

First, the Authority considers that the Secretary of State has failed to comply with the public sector equality duty in one important respect. The Equality Impact Assessment identifies a mitigating step (namely ensuring that King Priory has some pupil premium children) and suggests that this is the only measure that could be implemented by the Department to mitigate the potential adverse impact, short of not proceeding with the academy. The

Secretary of State has failed to consider the obvious mitigating step of providing additional funding to schools that will be negatively impacted (in particular Marden High School) to ensure that educational standards do not fall as a result of the lower pupil numbers. The Secretary of State refers to a “consequent loss of £85k in funding”, to Marden High School, whereas the reduction on the roll by 60 pupils will result in a loss in the region of £280k when taken across a full financial year. The Secretary of State identifies that the reduction in funding (in consequence of lower pupil numbers) could lead to poorer education for pupils and so it was appropriate for the Secretary of State to have gone on to consider how he could mitigate that funding situation.

The lateness of the Secretary of State’s decision and the determination to implement the changes in September 2013, has left the other schools within North Tyneside with very little time to undertake and implement proper transition planning. The Authority’s requests for the Department for Education to engage with it to address concerns and explore mitigating factors have not been properly addressed. It appears that while every support is being offered to the proposed academy, including a payment in the region of £5 million to cover the King’s School’s loan and overdraft, maintained schools are being left to deal with the impact themselves, while being expected to raise standards.

Further, for the reasons given in the pre-action letter of 16 July 2013 (which have not been remedied by the fresh decision and which are not repeated here), the Authority maintains its position that the decision to proceed with Kings Priory Academy is irrational. In particular, in circumstances where there is an anticipated surplus of 18.1% in secondary school places, it is difficult to see how any reasonable Secretary of State could find that funding the debt of a fee charging school in order to further the proposal for the new academy represents good value for money on one hand, yet on the other, provide no financial support to schools affected by the proposals. The Authority, as it has always indicated, remains willing to explore the options available with the Secretary of State and Department for Education officers.

The Authority requests by **4 pm on Thursday 1 August 2013** confirmation of the support the Secretary of State is proposing to offer to the schools affected by the proposed Kings Priory Academy. The Authority repeats its request for the educational impact assessment and asserts that it is in the public interest for the information to be disclosed. It is unreasonable for the Secretary of State to withhold that information. If court proceedings are commenced an order for disclosure will be sought.

I look forward to receiving your substantive response to enable the Authority to consider its position.

Yours faithfully



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