

**Cabinet
(Extraordinary Meeting)**

5 August 2013

Present: N Redfearn (Elected Mayor) (in the Chair),
Councillors EN Darke, CA Gambling, R Glindon, I Grayson,
JLL Harrison, F Lott, CB Pickard and JJ Stirling

In Attendance: Councillor J M Allan

CAB66/08/13 Apologies

Apologies were received from Councillor L Spillard.

CAB67/08/13 Declarations of Interest

No declarations of interest were made.

CAB68/08/13 Kings Priory Proposals (All Wards)

Cabinet considered a report which gave an update on the Kings Priory Academy proposals. The report also requested Cabinet to determine what further action, if any, the Authority should now take. A supplementary report, circulated separately, which provided a further update following receipt on 1 August 2013 of a response from the Treasury Solicitor on behalf of the Secretary of State for Education to pre-action correspondence was also considered.

In accordance with the urgency provisions contained in the Council's Constitution, approval had been obtained from the Chair of the Overview and Scrutiny Committee to a decision being taken by Cabinet as a matter of urgency and from the Chair of Council that the decision would not be subject to call-in.

The reason for urgency was as follows:

'To enable Cabinet to consider what further action, if any, the Authority should take following receipt of the Secretary of State's decision in relation to the Kings Priory proposal and subsequent response received to pre-action correspondence; and in view of the scheduled opening of the Academy in September 2013, there was a need to avoid any unnecessary delay in addressing this matter.'

The background information relating to the Kings Priory proposals was contained in the reports that had been considered at the Extraordinary Council meeting and Extraordinary Cabinet meetings on 17 July 2013.

At its meeting on 17 July 2013 Council had agreed that it was opposed to the Kings Priory Academy proposals because of the impact on education across the whole of the Borough. Council had agreed to support Cabinet in taking all appropriate steps to secure that the Department for Education (DfE) reconsidered the decision to enter into the funding agreement to create the Kings Priory Academy to ensure that errors were rectified and the impact upon other schools was properly considered.

Cabinet had met immediately following the Council meeting on 17 July 2013 and considered the view expressed by the Council meeting and had agreed:

- '(i) to take all appropriate steps to secure that the Department for Education reconsiders the decision to enter into the funding agreement to create the Kings Priory Academy to ensure that errors are rectified and the impact upon other schools is properly considered;
- (ii) that the Authority should issue a pre action protocol letter to the Secretary of State for Education to challenge the decision making process with regard to his decision made on 5 July 2013 and detailed in his decision letter dated 10 July 2013; and
- (iii) consider the Secretary of State's response to pre action correspondence before determining whether any further action is appropriate.'

On 18 July 2013 the Authority had sent a pre action protocol letter to the Secretary of State for Education (Appendix 1 of the report). On 25 July 2013 at 6.57pm a response had been received from the Treasury Solicitor's Department on behalf of the Secretary of State (Appendix 2 of the report), which indicated that the decision to enter into a funding agreement to establish the Kings Priory Academy would be set aside and looked at afresh.

However, at 10.30am on 26 July 2013 the DfE had e-mailed a letter to the Strategic Director for Children, Young People and Learning stating that the Secretary of State had considered the matter afresh and had decided to enter into a funding agreement to establish the Academy (Appendix 3 of the report). The reasons for the decision were not provided. The Authority had responded on 26 July 2013 expressing concern at the Department's conduct in making the further decision without first providing an opportunity for the Authority to comment (Appendix 4 of the report). The Authority had requested the full reasons for the decision by 4pm that day.

At 5.59pm on 26 July 2013 the Authority had received the full reasons for the decision taken by the Secretary of State earlier that day (Appendix 5 of the report). The decision letter included an equality impact assessment (Appendix 6 of the report). However, a copy of the DfE's educational impact assessment had not been provided.

The decision letter had been considered and a further letter sent to the Treasury Solicitor (Appendix 7 of the report). The outstanding concerns were as follows:

- '(i) the Secretary of State has acknowledged that the impact of the Academy will be lower pupil numbers and hence affect the finances and viability of neighbouring schools, particularly Marden High School. Pupils with special educational needs and non Christian pupils are likely to be "over-represented" in the other schools (or to put it another way, underrepresented in Kings Priory) and therefore there could be some adverse effect on those groups. Despite this, the Secretary of State has not gone on to consider the obvious mitigating step of providing additional funding to schools that will be negatively impacted to ensure that education standards do not fall as a result of the lower pupil numbers.
- (ii) 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 to engage with it to address concerns and explore mitigating factors have not been properly addressed. It appears that while every support is offered to the proposed academy, including a payment in the region of £5 million to cover the King's School loan and overdraft, maintained schools are being left to deal with the impact themselves, while being expected to raise standards.

- (iii) the Authority maintained its position as set out in the pre action letter that the decision to proceed 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 a 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 had continued to indicate that it remained willing to explore the options available with the Secretary of State and the Department for Education. Confirmation of the support the Secretary of State was proposing to offer to the schools affected by the proposed academy had been sought by 4pm on Thursday 1 August 2013.

The supplementary report explained that on 1 August 2013 the Authority had received a response from the Treasury Solicitor on behalf of the Secretary of State for Education to its pre action correspondence (Appendix 1).

The letter asserted that the Authority had not complied with the Pre-Action Protocol for Judicial Review and on that basis had refused to provide a full and detailed response. In the circumstances of the matter, where time was of the essence, this was a disappointing stance for the DfE to take. The point had not been accepted by the Authority as clearly the letters formed part of an ongoing pre-action correspondence of which the Department was well aware.

It was considered that the Secretary of State was wrong to state that the Authority's mitigation argument went to the merits of his decision rather than the public sector equality duty. It was a surprising suggestion as the DfE's own Equality Impact Assessment document contained a section about mitigating steps and it was something that, following formal prompting from the Authority, he considered he needed to take into account but did not do so properly. The case referred to (*R(AM) v Secretary of State for Work and Pensions* [2013] EWHC 2213 30 July 2013) did not change the general principles that applied to the public sector equality duty.

The Secretary of State had failed to respond to the Authority's point that he had significantly underestimated the loss in funding for Marden High School and he did not seem to recognise that he should have considered how to mitigate the funding implications for that school and others. In essence, while the Secretary of State was prepared to facilitate the success of the Kings Priory Academy by funding the substantial debts of the fee charging Kings School he was not prepared to discuss the provision of support to existing maintained schools affected by the proposals. In managing the increased surplus places within the school system the Authority may be forced to explore a re-organisation of the system and address the consequential cost and disruption that would arise.

Despite the Authority's openness and support in providing educational impact assessment data to the Secretary of State throughout and earlier assurances that the impact assessment would be a joint piece of work, the Secretary of State had continued to refuse to disclose the Department's own educational impact assessment. This was a concerning approach, given the substantial public interest in this issue and the errors that the Secretary of State appeared to have made to date.

In light of the Secretary of State's unwillingness to engage the Authority had to consider whether it wished to pursue legal proceedings with a view to forcing the Secretary of State to reconsider his decision in light of a full equality impact assessment and to disclose the educational impact assessment.

Cabinet

Following advice by the Head of Law and Governance it was noted that the concerns raised in the Authority's Pre-Action Protocol letter had in the main been addressed in the Secretary of State's subsequent decision letter received on 26 July. As a result, although it remained possible to pursue Judicial Review proceedings it was likely that the Secretary of State would respond by taking a further decision and confirm entering into the Funding Agreement for Kings Priory Academy while declining to provide financial support to maintained schools to instigate the impacts identified in the Equality Impact Assessment.

Cabinet Members expressed serious concerns about the Secretary of State's stance and the irrational explanations given for his decision to allow the new Academy to proceed without engaging with the Authority. They were particularly concerned about the financial and educational impact the new Academy would have upon other schools in the Borough. However, Cabinet were acutely aware of the effect any ongoing uncertainty would have on children and their families; they wanted the best for all school children in North Tyneside and that was why there had been ongoing correspondence with the government, since becoming aware of the proposals in September last year.

Cabinet were deeply disappointed at the manner in which the Authority had been treated by the Secretary of State by not providing requested information and leaving it until the very last minute to inform the Authority of the decision. By rushing through such an important decision he had made key mistakes and had not properly engaged with the Authority, who would now be left to address the consequences, including an increase in surplus places. It was noted that the Secretary of State had acknowledged that the decision to support Kings Priory Academy would impact on individual schools by increasing surplus places. It was acknowledged by Cabinet that the number of surplus places would have a destabilising impact on individual schools and they would suffer a disproportionate impact over a very short period of time and as a result the Authority's school system would require review.

Concerns were expressed about the haste with which the matter had been dealt with. If the government had been prepared to set their opening timescale for 2014, this would have provided more time to sensibly consider the matter.

It was hoped that the Secretary of State would come forward with an offer of additional funding to support the local schools in the coming years, particularly in light of the support he was offering to the Academy, including a payment of £5 million to cover the Kings School debts.

Cabinet considered the following decision options:

Option 1 - that judicial review proceedings be commenced.

Option 2 - that judicial review proceedings be not commenced

Resolved that (1) judicial review proceedings into the Kings Priory Academy decision be not commenced, and

(2) officers report back to Cabinet in the next few months on the further steps to be taken to address the impact of the surplus places resulting from the setting up of the new Academy.

(Reason for decision – to ensure there was no further uncertainty for children and families about school places for September 2013 and that the destabilising and disproportionate impact on individual schools over a very short period of time could be addressed by the Cabinet as soon as possible.)

Cabinet

CAB69/08/13 Date and Time of Next Meeting

6.00pm on Monday 12 August 2013.

Minutes published on Thursday 8 August 2013.

Decisions contained within these Minutes are not subject to Call-In and may be implemented immediately.