



School Closure
Review Panels

DECISION AND REASONS

by

THE SCHOOL CLOSURE REVIEW PANEL

PANEL MEMBERS: LESLEY WARD (CHAIR), RUSSELL ELLERBY, FORBES MITCHELL

with reference to

**ABERDEENSHIRE COUNCIL'S PROPOSAL TO CLOSE CRIMOND PRIMARY SCHOOL
DYSLEXIA UNIT AND KELLANDS PRIMARY SCHOOL DYSLEXIA UNIT**

**DECISION FOLLOWING A REVIEW BY THE SCHOOL CLOSURE REVIEW PANEL
IN TERMS OF SECTION 17B and 17C OF THE SCHOOLS (CONSULTATION) (SCOTLAND) ACT
2010**

23 November 2015

Decision

The School Closure Review Panel refuses consent to Aberdeenshire Council's proposal in respect of the closure of Crimond School Dyslexia Unit and Kellands School Dyslexia Unit. The panel remit the proposal to Aberdeenshire Council in terms of s17C(1)(b) of the Act for a fresh decision as to implementation and sets out the steps they are required to take in terms of s17C(3).

1. Following a thorough review of the information contained in all of the documents received from the Scottish Ministers, together with the additional documentation provided by Aberdeenshire Council in response to the requests made by the School Closure Review Panel, the Panel have carried out a review of their proposal. In carrying out the review we have considered both grounds in terms of s17B of the Schools Consultation (Scotland) Act 2010(as amended). The panel have concluded that Aberdeenshire Council have failed in a significant regard to comply with the requirements imposed on it in terms of that Act in so far as they are relevant in relation to the proposal in terms of s17C(4)(a) of the Act. The School Closure Review Panel refuses consent to Aberdeenshire Council's proposal in respect of the closure of Crimond School Dyslexia Unit and Kellands School Dyslexia Unit. The panel remit the proposal to Aberdeenshire Council in terms of s17C(1)(b) of the Act for a fresh decision as to implementation. The Panel specify the following steps that must be taken again by Aberdeenshire Council before a fresh decision can be made, in terms of s17C(3) of the Act:-
 - In relation to Crimond School, the council must carry out the preliminary requirements set out in s12A of the Act. The council must then prepare a fresh educational benefits statement in terms of s3 of the Act and proceed with a fresh proposal paper in terms of s4 of the Act, ensuring that they comply with the additional consultation requirements of s13 of the Act.

- In relation to Kellands School the council must prepare a fresh educational benefits statement in terms of s3 and proceed with a fresh proposal paper in terms of s4 of the Act.
- The council shall have regard to the Statutory Guidance on the Schools Consultation (Scotland) Act 2003 from May 2015 in formulating its proposal.
- The council shall have regard to the terms of the Additional Support for Learning (Changes in School Education) (Scotland) Regulations 2005 in setting out the timescale for implementation of its proposal.

2. The panel were provided with the following copy documents by Scottish Ministers:-

- Letter to the Convenor of the School Closure Review Panel 'SCRIP' from Jonathan Moore, Head of School Infrastructure Unit dated 20 October 2015
- Letter to Ms. Maria Walker, Director of Education and Children's Services Aberdeenshire Council from Jonathan Moore, Head of Schools Infrastructure Unit dated 20 October 2015, 'the call in letter'.
- Aberdeenshire Council Proposal Document dated January 2015
- Aberdeenshire Council Consultation Report dated April 2015
- Notice of the Decision to close the two units published on the council website
- All written representations made by stakeholders requesting call in dated September 2015
- Scottish Government's request for advice from Education Scotland dated 16 September 2015
- Response by Education Scotland dated 22 September 2015
- Scottish Government's request for further information from Aberdeenshire Council dated 17, 18 September 2015
- Aberdeenshire Council's response dated 23 September 2015.

3. The following copy documents were produced to the Panel by Aberdeenshire Council following two requests from the Panel for further information dated 27 and 30 October 2015:-

- Letter to SCRIP from Ms. Maria Walker, Director of Education and Children's Services, Aberdeenshire Council dated 2 November 2015
- Response by Aberdeenshire Council to list of questions from SCRIP
- Crimond Primary School Condition Assessment dated 1 May 2014
- Crimond Primary School Suitability Assessment (undated)
- Crimond Primary School Dyslexia Unit Catchment Area
- Kellands Primary School Condition Assessment 10 May 2011
- Kellands Primary School Suitability Assessment dated 2 March 2009
- Kellands Primary School Dyslexia Unit Catchment Area
- Crimond and Kellands Primary School Dyslexia Units Equality Impact Assessment
- Report to Education, Learning and Leisure Committee dated 31 October 2013
- Report to Education, Learning and Leisure Committee dated 20 March 2014
- Report to Education, Learning and Leisure Committee dated 28 August 2014
- Letter to SCRIP from Ms Maria Walker, Director of Education and Children's Services Aberdeenshire Council dated 4 November 2015
- Covering letter sent to parents/carers Crimond and Kellands Schools dated 14 December 2014
- Covering letter sent to stakeholders of Crimond and Kellands Schools dated 14 December 2014
- Aberdeenshire Council Public Notice informing of consultation and dates of public meetings
- Screenshot of Aberdeenshire Council Website consultation page.

4. The Panel had regard to the statutory guidance of the Act.

5. The Panel also had sight of the council guide for parents entitled 'Right Support Right Place Right Time' found at <https://www.aberdeenshire.gov.uk/media/5854/rightsupportrightplacerrighttime-aguideforparentsproof3.pdf>.

Grounds for Call In

6. In terms of s17(2) of the 2010 Act the Scottish Ministers may issue a call in notice only if it appears to them that the education authority may have failed-
 - (a) in a significant regard to comply with the requirements imposed on it by (or under) this Act so far as they are relevant in relation to the closure proposal or,
 - (b) to take proper account of a material consideration relevant to its decision to implement the proposal.
7. The first ground for the call in related to both schools. This was on the basis that the educational benefits statement contained within the proposal document and consultation report may not meet the requirements of s3(1)(d) and s3(2) of the Act. The call in letter stated 'Scottish Ministers have concerns that the council have not provided sufficient information in relation to the particular educational benefits of the proposal for children who are currently attending the dyslexia units'. The Ministers also considered that parents have been given little detail on the proposed 'enhanced provision model' or if training will take place so that 'equivalent provision' would be made available in the local schools for the children who will require to leave the dyslexia units if the proposal is implemented. A further matter raised by Ministers in this connection was the terms of Regulation 3(1)(a) of the Additional Support for Learning(Changes in School Education)(Scotland) Regulations 2005 which has specific provisions for the timing of changes to educational provision for children with additional support needs. It is the Panel's understanding that all of the ten or so children currently attending the two units all come within the definition of a child with additional support needs in terms of s1 of the Education (Additional Support for Learning)(Scotland) Act 2004.
8. The second ground for the call in relates to Crimond School only. Crimond School is a rural school and accordingly the specific statutory provision contained in s11A to s13 of the Act apply. The Scottish Ministers have called the case in on the basis that the council may not have complied with these provisions given that the proposal document makes no mention of Crimond being a rural school. The consultation report refers to the rural school provisions contained in the 2010 Act prior to the amendments made by the Children and Young Persons Act 2014. The new rural school provisions came in to force on 1 August 2014 and therefore apply to the consultation process for the closure of Crimond School Dyslexia Unit.

Review

9. This proposal was called in on 20 October 2015. This Panel was constituted on 21 October 2015. In terms of s17C(5) of the Act the Panel must notify the education authority of its decision within 8 week of that date. We calculate that our decision must be made by 16 December 2015. In issuing our decision today we have therefor complied with that timescale.

In terms of section 17C(1) of the 2010 Act, following its review of the closure proposal, the Panel may refuse to consent to the proposal, refuse to consent to the proposal and remit it to the education authority for a fresh decision as to implementation, grant consent subject to conditions or grant consent unconditionally. The Panel is mindful that, in terms of section 17C(4), it may refuse to consent to the proposal under subsection (1)(a) or (b) of section 17C of the 2010 Act only if the Panel finds either or both of the following;

- (a) that the education authority has failed in a significant regard to comply with the requirements imposed on it by (or under) the 2010 Act so far as they are relevant in relation to the proposal,
- (b) that the authority has failed to take proper account of a material consideration relevant to its decision to implement the proposal.

10. Aberdeenshire Council is proposing to close two Dyslexia units in Crimond and Kellands school as part of their 'Enhanced Provision Model' which is referred to in their proposal document. The proposal is on the basis that the two units 'do not sit with an authority wide model and as such are inequitable and unsustainable'. The council were prompt in responding to our request for further information. Taking that additional information in to account, we understand that until July 2015 there were 4 pupils at Crimond School Dyslexia Unit and 6 at Kellands. Some of the pupils have a round trip of around 15 to 20 miles per day to travel to and from school. The pupils are all in the upper school, in primary 6 and 7. We understand that the arrangement operating before the proposal was made is that the pupils of both units have a planned transition in primary 7, returning to their catchment school with a view to progressing on to their catchment high school. It appears that with one exception, if the proposal is implemented the pupils will all have a reduced round trip of around one or two miles.
11. In our review we considered both aspects of s17B(1) of the Act. In terms of s17B(1)(a) we considered the two grounds of the call in in turn, educational benefits and rural school provisions.

Educational Benefits Statement

12. The preparation of an educational benefits statement is a key requirement of the consultation process in terms of s1(3) of the Act. The educational authority is required to prepare an educational benefits statement in accordance with s3 of the Act. Education Scotland's report (appendix 5 of the Consultation Report 4.1) stated 'This proposal has the potential to better meet the children, including those with dyslexia, in their local schools. However the council has not clearly outlined the educational benefits of the proposal to the children who are currently having their needs met in the dyslexia units'. In response a more detailed educational benefits statement was included in the consultation report however Education Scotland prepared a further report on 22 September 2015 (2.viii) at the request of Scottish Ministers. This contained the following summary conclusion:-

'HM Inspectors have reviewed the evidence and, on the basis of the evidence provided to Education Scotland, are of the view that the council has not taken reasonable steps to address the concerns set out in Education Scotland's original report'. These 'concerns' noted earlier in the same report were:

- the council need to clarify the educational benefits of the proposal for children in the dyslexia units;
 - the council needs to provide more detail about the enhanced provision model;
 - the council needs to provide more information regarding the future role of the teachers currently working in the unit; and
 - the council should consider whether or not the timescale allows sufficient time to ensure that the needs of all children with dyslexia, including those currently placed in the dyslexia units, can be fully met in their local schools."
13. The Panel has reviewed the educational benefits statement prepared by the council and the further evidence regarding educational benefits which is contained in the consultation report. The Panel has reviewed all of the further evidence available to it as noted above, including the reports from Education Scotland. In carrying out this review we have carefully considered the specific provisions of s3 of the Act as well as the detailed Statutory Guidance to the Act. We note that the policy of Aberdeenshire Council is to implement their 9 area model during 2014-2016. The stated aim is to provide support for all learners including those with dyslexia in the local schools with targeted support. In our view Aberdeenshire Council merely presented an overview of this policy in their educational benefits statement and a broad description of the likely potential benefits and impact of their policy to deliver 'enhanced provision across Aberdeenshire'.
 14. In carrying out our review we found a significant lack of evidence in the educational benefits statement in connection with the effects and benefits likely to result from the implementation of

the council's proposal or indeed detailed information about the enhanced provision model itself. We understand that in the informal meetings which took place before the formal consultation the council did present a PowerPoint of the enhanced provision model. A copy of this PowerPoint is contained within the document called 'Report to Education, Learning and Leisure Committee' dated 31 October 2013. This PowerPoint does give a little more relevant information on the enhanced provision model as it details where the 9 areas are and where the enhanced provision centres will be, but unfortunately this information was not included in the educational benefits statement in the proposal document or the consultation report.

15. The written responses to the proposal document were summarized by the council at page 5 of the consultation report. In particular it was noted that there were concerns highlighted about 'the impact of proposed change in pupils currently accessing the dyslexia units' and 'the capacity of staff and resources in local primary schools to meet the needs of learners with dyslexia' and 'concern about the level of support for children with dyslexia in large mainstream classrooms and the capacity of the proposal to promote equality and the duties as stated in the Education(Additional Support for Learning)(Scotland) Act 2004'. Had the council attempted to address these legitimate concerns in their consultation report they may have gone some way to providing an educational benefits statement which complied with the provisions of s3 of the Act. We have looked carefully at the concerns of Education Scotland in their report of 22 September 2015. We have come to the conclusion that the council have failed to clarify what the educational benefits will be for the children in the dyslexia units if the proposal is implemented. They have failed to adequately explain the 9 area model in the proposal document or the consultation report and they have not addressed whether the timescale they were working to allows sufficient time to ensure the needs of all of the children with dyslexia can be met in the local school.
16. In particular is it our view that the council has:-
 - failed to provide sufficient information in the educational benefits statement as to their assessment of the likely effects of the proposal on the pupils any affected school, any other users of the school's facilities or the pupils of any other schools in the authority's area in terms of s3(1)(a) of the Act.
 - failed to provide sufficient information in the education benefits statement of the likely effects of the proposal on any children who would, but for the proposal, be likely to become pupils of the school in terms of s3(1)(iii) of the Act.
 - failed to identify any adverse effects of the proposal and how they intend to minimize these adverse effects in terms of s3(1)(c) of the Act.
 - failed to give a description in the educational benefits statement of the benefits the council believes will result from the implementation of the proposal, and who is likely to derive that benefit in terms of s3(1)(d) of the Act.
 - failed to provide details within the educational benefits statement of the reasons for the council coming to that belief in terms of s3(2) of the Act.
17. We have concluded that in relation to both Crimond and Kellands Primary School Dyslexia units the requirements for an education benefits statement as set out in s3 of the Act have not been met. Our conclusion is that there has been a statutory failure in terms of s17C(4)(a) of the Act and that Aberdeenshire Council have failed in a significant regard to comply with the requirements imposed on it by (or under) the Act so far as they are relevant in relation to the proposal. The educational benefits statement is a key aspect of the school closure process. The Panel consider that this is therefore relevant in relation to the proposal in terms of s17C(4)(a) of the Act. Further, we consider that the failure to comply with the statutory provisions of s3 is a significant failure and not one that can be remedied by the imposition of conditions. The education benefits statement should contain essential information to explain the educational effects and benefits of those affected by the closure proposal. We have therefore concluded it is appropriate to remit the proposal back to the council for them to prepare a fresh educational benefits statement. The council may wish to have regard to the Statutory Guidance on the Act (May 2015) paragraphs 33 to 47 which the Panel found helpful in carrying out this review.

Rural schools provisions

- 18.** Crimond Primary is a rural school. The requirements for rural schools are set out in s11A to s13 of the 2010 (as amended by the Children and Young Persons (Scotland) Act 2014). These new provisions contain amongst other things, a presumption against a rural school closure, preliminary requirements in relation to rural school closure and additional consultation requirements where closure of a rural school is being proposed. In the call in letter of 20 October 2015 Scottish Ministers noted that 'Aberdeenshire Council's proposal paper makes no reference to the special provisions for rural school closure proposal set out in s11A to 13 of the 2010 Act'. It further states that the reference on the consultation report to rural schools provisions 'refers to the requirements in force prior to the amendments made to the 2010 Act by the Children and Young People (Scotland) Act 2014'. These changes came in to force on 1 August 2014 and the proposal document was issued in January 2015. It therefor appeared to Scottish Ministers that the council may not have applied its mind to the rural school provisions in force at the time the proposal document was issued.
- 19.** In our review we firstly looked at the provisions of the Act relating to preliminary requirements in s12A. This section sets out the steps a local authority is required to take when it is formulating a closure proposal. These provision therefore apply before a proposal document is issued, in terms of s12A(4) of the Act. We looked carefully at what the council did before the formal consultation process began from the evidence available to us. The council appear to have had meetings and discussion with parents and stakeholders in advance of the formal consultation process. This appears to have been to publicise the 9 area model of enhanced provision rather than to canvass views about reasonable alternatives to the closure to assist the council in considering if there are any reasonable alternatives to the proposal in terms of s12A(2). Once any reasonably alternatives have been identified, the council then has to consider the educational benefit of each alternative in terms of s12A(2)(c)(i). We see no evidence that the council took any steps to comply with s12A of the Act. It is clear that the council were working to the provisions of the Act in force prior to August 2014 which did not have these preliminary requirements. Indeed at page 15 of the consultation report the council refer to 'compliance with s12(3) of the Act' and sets out the previous provisions of the Act. S12(3)(a) has been repealed. In our view pre- consultation is not a substitute for, not does in reduce the need for compliance with the preliminary requirements of the Act. It is our conclusion that the council have failed to comply with s12A.
- 20.** S13 of the Act sets out the additional consultation requirements in relation to any rural school closure (s13(1)). S13(3) provides that the notice to be given to consultees in terms of s6 of the Act must give a summary of the proposal and any alternatives to the proposal. The notice must also make it clear to consultees that they can make written representations on the proposal, the alternatives and crucially, that they can suggest alternatives themselves (s13(3)(b) and s13(3)(c)). We asked the council for copies of the letters sent to parents and other stakeholders and for a copy of the website screenshot. We saw no evidence that the council had complied with this additional consultation requirement. The covering letter invited 'comments' on the council's proposal but nothing more. Similarly the website stated that 'comments' could be made but nothing more. It is our conclusion that the council have failed to comply with the requirements of s13(3).
- 21.** S13(2) of the Act provides that the proposal paper must provide reasons for the proposal, set out any alternatives which have been identified and explain why the authority considers that implementation of the proposal is the most appropriate response. Given the council have in our view failed to comply with s12A(2)(b) and identify alternatives (with the help of parents and other stakeholders) it is not surprising that the proposal document makes no mention of alternatives (other than the status quo) or any steps the council took in compliance with s13(2). The proposal document gives very little on the reasons for the proposal, gives nothing on the steps the council took in formulating those reasons and gives nothing on any alternatives to the proposal except para 5.1' alternatives to the proposal are; retention of the status quo'. The council gives nothing further on this alternative. No reasons are given why it is not an option other than the reference in the summary at the start of the proposal document that the two current units 'do not sit with an authority- wide model and as such are inequitable and

unsustainable'. We have concluded that the council failed to comply with the requirements of s13(2).

- 22.** S13(5) of the Act gives additional steps the council are required to take in carrying out a review of the proposal in the light of the written and oral representations received and the Education Scotland Report. When carrying out its review the council have to consider the proposal and any alternatives to it again. An assessment of the educational benefits of the alternatives has to be carried out. There is no evidence before us that the council have complied with this additional requirement. The only alternative identified is the status quo and no educational benefits of the status quo have been provided. It is our conclusion that the council have failed to comply with s13(5) of the Act.
- 23.** The Panel note that in the proposal document summary at the start of the document, the council seek to set out that this proposal is part of their 'strategic approach' however it is this Panel's view that by seeking to press ahead with the 9 area model and all that that entails, the council failed to provide a proper educational benefits statement and also failed to follow the specific statutory requirements of the 2010 Act relating to rural school. In short the council had reached a view about the way forward and everything that followed was based on a presumption in favour of that view. In this regard the Panel noted that on page 25 of the consultation report, at the meeting in Crimond School a parent is noted as asking 'Why are the units not kept open until the success of the nine area model is evident? Use expertise and units to support the implementation'. The answer given was that ' the formal consultation can't stop now it is underway and there is a need to have expert staff across Aberdeenshire'. The Panel consider it is a matter of regret that council did not consider this alternative proposal more seriously and invite the parent to make written representations about this idea, given that there is a legal presumption against the closure of rural schools in terms of s11A of the Act and given the council's duty in terms of s12A(2) of the Act to consider any alternatives to the proposal, and the duty in terms of s13(3)(2)(d) of the Act to set out those alternative proposals.
- 24.** Additionally in terms of s 13(3) of the Act the council have a duty to advise consultees that they can make written representations in which they may suggest alternatives to the proposal. The Panel further note that the Scottish Minister's request for further information dated 17, 18 September 2015 at point 3 sought the council response to the parental comment that 'there was only one model option presented at consultation. An alternative model could have been developed based on input from parents and community alike'. The council's response was that 'informal events described above provided opportunities for parents, staff and members of the public to suggest alternative models. There was a general agreement throughout the informal consultation events that there should be equity of provision across Aberdeenshire and the retention of the dyslexia units in 2 of the Nine Areas does not promote equity of provision'. There was no evidence available to the Panel to suggest that anyone at any of the meetings, formal or informal was being invited to suggest alternatives to the council closure proposal.
- 25.** The Panel note that Scottish Ministers sought clarification from the council with regard to the rural schools provisions in point 4 of the document dated 17 September 2015 (2ix) . The council were asked 'it would be helpful if you could indicate how the provisions in sections 11A to 13 of the Act have been met in relation to this proposal'. The council response is to state that the provisions have been complied with. In so doing they largely refer back to their consultation report. It is our conclusion that the council have failed to comply with the provisions of s11A, 12A, and 13 of the Act. Our conclusion is that there has been a statutory failure in terms of s17C(4)(a) of the Act and that Aberdeenshire Council have failed in a significant regard to comply with the requirements imposed on it by (or under) the Act so far as they are relevant in relation to the proposal. We consider that a failure to comply with the rural schools provisions is such a significant failure that we cannot dispose of this matter by the imposition of conditions. The presumption against rural school closure can only be rebutted by proper compliance with the preliminary and additional consultation requirements. Parents and other stakeholders have not been properly consulted and the alternatives to closure have not been properly considered. We therefore refuse consent to the proposal and remit the case back to the council to carry out the consultation process again. The council may wish to have regard to paragraphs 66to 82 of the Statutory Guidance which the Panel found helpful in carrying out this review.

Additional Support needs

26. In their call in letter the Scottish Ministers note that 'under the Additional Support for Learning(Changes in School Education)(Scotland) Regulations 2005, Regulation 3(1)(a) where an education authority transfers a child with additional support needs to another school under its management then it has the duty to seek and take account of relevant information and advice from appropriate agencies or other persons, which should be completed no later than 12 months before the change of school is anticipated'. It is the Panel's understanding that this means that the children in the two units may not be transferred to another school within 12 months of any proposal which involves the transfer of children with additional support needs from one school to another. The council require to have regard to this duty in formulating and implementing any future proposal.

Review of s17B(1)(b)

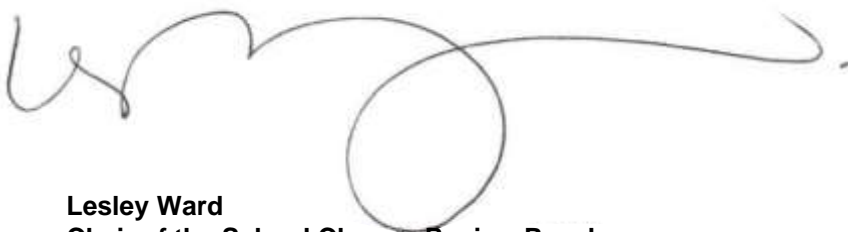
27. The call in is only in respect of s17(2)(a). We are however required to review the council decision in relation to both s17B(1)(a) and s17B(1)(b). Our decision is that the significant failure is in respect of s17B(1)(a) only. Our reason for coming to that conclusion is that there has been a significant failure in procedure. In our view this failure is so significant, and as a result the information before us is so lacking, it is impossible for us to conclude on the available evidence, whether the council may also have failed to take account of a material consideration relevant to its decision to implement its proposal. Taking into account the panel's observations, we believe a fresh submission by Aberdeenshire Council may meet the requirements set out in s17B(1)(b).

Grouping of proposals

28. The panel noted that paragraph 20 of the Statutory Guidance states that if proposals are not strongly linked separate proposals would be more appropriate. The council have chosen to link these two proposals together. Because one of the schools is a rural school we have specified different steps to be taken by the council for each school. It is for the council to reflect on the statutory guidance and decide whether (or not) to link the two schools in any future proposal paper.

Conclusion

29. **For the reasons given above, we consider that Aberdeenshire Council have failed in a significant regard to comply with the requirements imposed on it by (or under) the Act so far as they are relevant to the proposal in terms of s17B(1)(a) of the Act. For the reasons given above, this failure is significant. We therefore refuse consent to the proposal and remit it back to the council for a fresh decision as to implementation in terms of s17(3) of the Act. We have set out the steps we require them to take.**



Lesley Ward
Chair of the School Closure Review Panel