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Perth and Kinross Council
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Dear Ms Devlin,

**CALL-IN NOTICE UNDER SECTION 15(3) OF THE
SCHOOLS (CONSULTATION) (SCOTLAND) ACT 2010
PERTH AND KINROSS COUNCIL – DECISION TO ABERNYTE PRIMARY SCHOOL**

I refer to Karen Robertson's email of 27 May 2019 notifying Scottish Ministers of Perth and Kinross Council's decision of 22 May 2019 to implement its proposal to close Abernyte Primary School.

As required under section 15(2) of Schools (Consultation) (Scotland) Act 2010 ("the 2010 Act"), a three week period began on 22 May 2019 for any person to make a representation to the Scottish Ministers requesting that the decision should (or should not) be called in by them for further investigation. That period expired on 11 June 2019 and 52 representations were received in total, which almost all requested that Scottish Ministers call in this decision.

Under section 17(2) of the 2010 Act, the Scottish Ministers may only issue a call-in notice 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.

After consideration of the information provided by the representations received, together with Perth and Kinross Council's consultation report and Education Scotland's report, the Scottish Ministers have concluded that there are grounds on which to call-in the decision to implement the closure proposal with reference to sections 17(2)(a) of the 2010 Act.



Financial information

The Scottish Ministers have concerns about Perth and Kinross Council's assessment of the financial savings that would result from the closure of Abernyte and that these savings have been overstated.

The Scottish Ministers are also concerned about the high refurbishment costs for a school with a "B" condition rating. In the Council's final report, it provided a detailed breakdown and rationale for the £330k refurbishment costs, however, in our view these costs appear to be high for a school with a "B" condition rating and are also stated to be "outwith five years" and therefore should not be included in costs the Council says are required in the next 2-5 years.

After careful consideration, the Scottish Ministers have concluded that further investigation is merited into the Council's assessment of the future capital costs the Council would incur if Abernyte were to remain open. There may be a failure with reference to section 17(2)(a) of the 2010 Act – that is, that Perth and Kinross Council may have failed *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*, in that the financial information the Council provided in terms of section 4(2A) of the 2010 Act appears to have been inaccurate.

Previous actions taken to address falling pupil rolls

The Scottish Ministers note that the Council has failed to describe in their report the actions they have taken in the past to address the reasons for closure and the reasons for not taking any steps, or to explain why it did not take any such steps (as required by section 13(2)(b) and (c) of the 2010 Act, respectively). In addition, the Scottish Ministers are concerned by representations they have received which contend that the Council has not taken the appropriate steps to address these issues despite evidence of letters from the local community to the Council about their concerns dating back to 2012. The Council's reports also appears to focus primarily on the pre-consultation activity undertaken by the Council in the run up to formally consulting on closure and do not appear to describe explicitly the previous action the Council had taken, nor why they did not take steps to address the problems identified.

After careful consideration, the Scottish Ministers have concluded that further investigation is merited into the efforts the Council has made to describe what steps it took to address the reasons for closure which is a requirement under section 13(2)(b) of the 2010 Act. There may be a failure with reference to section 17(2)(a) of the 2010 Act – that is, that Perth and Kinross Council failed *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*. Given the centrality of the unsustainably low pupil roll to the Council's proposal, such a failure would be considered to be a failure in a significant regard.

Community impact

The Scottish Ministers note that the 2010 Act requires that the local authority consider the impact on the community's future sustainability, availability of the school's premises and facilities for use of the community. There appears to have been significant distance between the local community and the local authority on the impact Abernyte's closure will have on the

community and, in the case of ownership of the playing field, a lack of knowledge on the part of the Council of the local position. This casts significant doubt as to whether the Council has had “special regard” to the likely effects of the proposed closure on the local community, as they are required to under section 12(2) and (3)(b) of the 2010 Act.

The Scottish Ministers consider that the Council appears to have underestimated the level of community use currently and restricted its interpretation of that to non-school related groups. The Council also relies on the use of the local Church as an alternative venue, which based on the information provided by respondents appears a doubtful alternative.

After careful consideration, the Scottish Ministers have concluded that further investigation is merited into the Council’s assessment of the impact of the proposal (if implemented) on the local community. There may be a failure with reference to section 17(2)(a) of the 2010 Act, that is, that Perth and Kinross Council failed *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*, in that they may have failed to have special regard to the factors for proposals for rural school closures in terms of section 12(2) and (3) of the 2010 Act. It appears that the potential failure would be a failure in a significant regard, as the enhanced protections for rural schools provided for in the 2010 Act requires the Council to have “special regard” to the rural factors.

Conclusion

Therefore, in line with the powers available to them under section 15(3) of the 2010 Act, the Scottish Ministers are calling in the proposal under section 17(2)(a) of the 2010 Act for the reasons set out above.

As required, under section 17A(2) of the 2010 Act following call in, the Scottish Ministers are referring the proposal to the Convener of the School Closure Review Panel. The Convener is required to constitute a School Closure Review Panel which will review the proposal and reach a decision in terms of sections 17B and 17C of the 2010 Act.

Perth and Kinross Council may not implement the proposal (either in whole or in part) unless the School Closure Review Panel grants consent to the proposal (either with conditions or unconditionally) and either the period for making an appeal to the Sheriff has expired without any appeal being made, or, if an appeal is made, it is abandoned or the Sheriff has confirmed the Panel’s decision (in terms of section 17A(4) of the 2010 Act).

Yours sincerely,



Jerry O’Connell
WIR : School Funding, Infrastructure and Organisation

