



Office of
the Schools
Adjudicator

Determination

Case reference: STP641

Proposer: The London Borough of Tower Hamlets

Proposal: To discontinue Raine's Foundation School on 31 August 2020

Referred by: The Raine's School Foundation

Date of decision: 20 April 2020

Determination

Under the power conferred on me by Paragraph 17 of Schedule 2 to the Education and Inspections Act 2006 and The School Organisation (Establishment and Discontinuance of Schools) Regulations 2013, I have considered the proposal to discontinue Raine's Foundation School. I hereby approve the proposal.

The proposal

1. On 5 November 2019 the London Borough of Tower Hamlets (the Borough) published a statutory notice to discontinue, that is close, Raine's Foundation School (the school) on 31 August 2020. The school is a voluntary aided school for boys and girls aged 11 to 18 in Bethnal Green. The school has a religious character of Church of England and the body representing the denomination is the Diocese of London (the Diocese). The Raine's School Foundation (the Trust) is the school's trust.

Jurisdiction

2. The proposal was published under section 15 of the Education and Inspections Act 2006 (the Act). Schedule 2 to the Act makes the Borough the relevant authority to determine these proposals in the first instance. Regulation 13(1) of the School Organisation (Establishment and Discontinuance of Schools) Regulations 2013 (the Regulations) provides a representation period of four weeks after the publication of the proposals for any person to send the Borough comments on or objections to the proposals. Regulation 14

requires the Borough to determine the proposals within two months of the end of the representation period.

3. The proposals were published on 5 November 2019 and the representation period ended on 2 December 2019. On 29 January 2020, the Borough approved the proposal to close the school within the two-month period set by the Regulations. This decision was subject to an internal review and was confirmed on 18 February 2020 more than two months after the representation period closed.

4. Paragraph 14(2)(d) of Schedule 2 to the Act allows the trustees of a voluntary school to request that a local authority refers to the adjudicator any decision taken by that local authority on a proposal made under section 15 of the Act. Regulation 18 of the Regulations requires that such a referral is made within four weeks of the decision being made. The Trust asked the Borough to refer the decision to the adjudicator on 25 February 2020 which is within the required time period.

5. I have considered whether the Borough should have allowed for the possibility that its decision on the proposal might have been called in for scrutiny and ensured that the decision and scrutiny of it could be completed within the two-month period allowed. If I took that view, then there would be no material difference to the consideration of the proposal because paragraph 13 of Schedule 2 to the Act requires that when a local authority does not take such a decision within the prescribed period, it is referred to the adjudicator. On balance I have decided to take the decision of the Borough on 29 January 2020 as the date on which the decision was taken and I am therefore considering the referral under paragraph 14.

6. I am satisfied that I have jurisdiction to determine this proposal.

Procedure

7. In considering this matter I have had regard to all relevant legislation.

8. The documents I have considered in reaching my decision include:

- a) the statutory notice of 5 November 2019;
- b) the eight representations received on that notice;
- c) consultation documents concerning the proposal;
- d) relevant papers from the Borough Cabinet meeting of 29 January 2020 and the Overview and Scrutiny Committee of 18 February 2020;
- e) additional comments received from people or bodies that made representations on the notice and from a local campaigner following my invitation for further comment from these people or bodies;

- f) the responses to my enquiries from the Borough, the Interim Executive Board (IEB) of the school, the Diocese and the Trust, in writing and on the telephone; and
- g) maps showing the location of the school sites together with plans showing the layout and ownership of the buildings and sites.

Background

9. The school can trace its history back over 300 years from when it was established by Henry Raine in Wapping in 1719. Henry Raine left a large bequest to the school which he had founded and this legacy is now managed by the Trust which is a registered charity.

10. The school has occupied several sites across the East End of London and now occupies two sites in Bethnal Green. One site, in Approach Road, is entirely owned by the Trust while the other, in Old Bethnal Green Road, is partly owned by the Trust, partly by the Diocese and partly by the Borough. The Old Bethnal Green Road site is not currently used by the school. The Approach Road site benefitted from a capital investment from the Building Schools for the Future programme between 2010 and 2013 which refurbished the existing listed building and added new accommodation. The Old Bethnal Green Road site has also been refurbished in recent years. The two sites are just over half a mile apart.

11. As well as owning some of the land occupied by the school, the Trust appoints governors (prior that is to the replacement of the governing board by the IEB) and provides scholarships and bursaries to current and past students.

12. In September 2008, the school was considered by the Office for Standards in Education (Ofsted) to be “*Satisfactory*” and by November 2011 its rating had increased to “*Good*”. However, the most recent two judgements by Ofsted in November 2015 and October 2017 have been “*Requires Improvement*”. There have been two subsequent monitoring visits from Ofsted, neither suggested the school no longer requires improvement. Various strategies were employed to address the issues underlying these judgements prior to the IEB being established on 29 October 2018. Support for the school is currently provided by Oaklands School (Oaklands) which is also sited on The Old Bethnal Green Road. The headteacher of Oaklands is the executive head of both schools. The following tables show the attainment and progress made by students at the school in the last three years compared to that of all children across the Borough.

Attainment 8	2017	2018	2019
School	39.8	34.9	39.7
Borough	47.2	46.8	48.4

Progress 8	2017	2018	2019
School	-0.46 Below average	-0.84 Well below average	-0.39 Below average
Borough	0.2	0.14	0.24

13. During this period the school roll has fallen from 678 in 2015 to 217 in November 2019 when the statutory notice was published. The Department for Education (DfE) database records the school capacity as 911. The DfE database also records the school as having a deficit of £487.2k for the financial year 2018-2019.

14. Although the school has a religious character, its admission arrangements do not currently include any faith-based oversubscription criteria. Even if they had, the school has not been fully subscribed since 2011 and so the oversubscription criteria would not have come into play.

Consideration of factors

15. The DfE publishes statutory guidance for proposers and decision makers concerning the opening and closing of maintained schools. The most recent version of this guidance is dated November 2019 and I have had regard to that guidance.

16. From reading the responses to these proposals it is clear to me that there is a great deal of emotion in parts of the community concerning this proposal. This is shown in suggestions of who should have done what in the past in order to prevent the school from ending up in the situation in which it now finds itself. There are also allegations about the motivation of various parties for the actions they did, or did not, take. While these comments provide background, it is not my role to apportion blame, or to suggest corrective action or alternative proposals for the future of the school. My role is to determine the proposals in front of me which I will do as the Act requires me to do by considering them afresh.

The statutory process

17. The Borough began the first stage of the statutory process, that is consultation, on 10 June 2019. The consultation included plans to expand Oaklands as well as the closure proposal which I am considering. On 3 July 2019, the consultation period was extended from 24 to 31 July and parts of the consultation document were struck out and replaced. The parts struck out concerned the admission of children to Year 7 in September 2019. The deleted parts set out proposed actions which appear to me not to conform with the requirements of legislation concerning school admissions. The replacement text addresses that issue.

18. During the consultation period, two public meetings were held, and the local authority provided the opportunity to respond to the consultation on-line. I have seen evidence of wide media coverage at the time and I am satisfied that everyone who should have been consulted had the opportunity to respond to the consultation.

19. The responses to the consultation were reported to the Borough's cabinet on 30 October 2019 when it agreed to publish the statutory proposal for the closure of the school and also agreed to develop further proposals for the expansion of Oaklands. It is not for me to scrutinise the Borough's decision-making process; however, any dependency between the closure of the school and the expansion of Oaklands is relevant to my considerations and I will discuss that issue and explain why it is relevant to my considerations below.

20. I am satisfied that the notice was published as required by the Regulations on the Borough's website and in a local newspaper. I am also satisfied that the proposals contained all of the information required by the Regulations.

21. During the four-week representation period eight representations were received. Two of these representations were from parents or carers of children currently at the school. One was from a parent of a former student; one was from the Trust and another from a member of the Trust in a personal capacity. Three were from people identified as "*Other*" or "*Did not say*". All of these representations were against the proposal.

22. The Borough approved the proposal to close the school at its meeting on 29 January 2020. I am satisfied that the process laid out in the Act and the Regulations were properly followed. As noted above, my role is not to review the decision of the Borough, but to consider the case afresh.

Demand and Need

23. The first matter which the statutory guidance requires me to consider is whether there are sufficient places elsewhere in the local area to accommodate displaced students. I am also required to take into account the quality of alternative places in the local area.

24. When the Borough consulted on the proposal to close the school it also consulted on the expansion of Oaklands, promising that all children displaced by the closure would be offered a place at Oaklands. This offer of a place at Oaklands also appeared in the statutory proposal. Oaklands is regarded by Ofsted as a "*Good*" school and so children transferring to Oaklands should expect a higher quality of education than they would at a school which has required improvement for five years. Oaklands is a community school and so the Borough is the admission authority and has the power to make the offer of places. My concern is whether the closure of the school was dependent on the expansion of Oaklands.

25. A local authority is only required to consult the governing body of a community school before it increases the published admission number (PAN). However, if an expansion of the school's premises is required to accommodate additional students it may

be necessary to follow statutory processes before doing so. The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 set the threshold at which an expansion of a school's premises requires statutory proposals. If it was not possible to accommodate the children needing places at Oaklands without physically expanding the school, I would need to be sure that any necessary expansion was possible before approving the closure. Furthermore, if the required expansion of Oaklands was of a scale which would itself require statutory processes, then the two processes would be related and would have to be considered together.

26. The roll at the school has been falling for many years; it would seem that consultation on its closure has also led to many parents of children at the school looking for places at other schools. Between the start of consultation and January 2020, 143 students left the school other than at the end of Years 11 and 13. Of these 28 were offered places at Oaklands, the remainder finding places at 31 other schools. The DfE database shows that there are 50 secondary schools within three miles of Approach Road.

27. In January 2020, there were 44 students in Year 13. These students will be leaving the school in the summer of 2020 to take up places in further or higher education or employment. No students had chosen to begin studies in Year 12 in September 2019. Among the representations there was concern that students reaching the end of Year 11 in 2019 were encouraged to leave the school and take up places in other post-16 provision resulting in there being no current Year 12 and further undermining the school's viability. In my view it would have been irresponsible to encourage young people to take up courses of study when there was the chance that it would not be possible to complete them if the school closed. Larger schools would also be able to offer a broader range of courses.

28. There were 73 students in Year 11 who would, if not for Covid-19, have taken exams in the summer of 2020, not all of these would want a school sixth-form place. For those who do, I am confident that, with the many providers in the area, they could find a school where they could choose to study from a much wider range of subjects than it would be possible at the school.

29. When I spoke to representatives of the IEB on 25 March 2020 I was told that there are currently no students in Year 10, their parents having removed them at the beginning of Key Stage 4 due to uncertainty about the school's future. Again, objectors said that pressure was put on parents to remove their children to undermine the viability of the school. If that pressure was to advise that other schools could offer their children a wider range of Key Stage 4 courses, where they could be sure of finishing the courses in schools which did not require improvement, then that would seem to me to be a responsible course of action and in the interests of the children.

30. When I spoke to representatives of the IEB I was told that there were 42 students in Year 9, 34 in Year 8 and none in Year 7. In anticipation of the closure the local authority had put in place a mechanism to manage the transfer of children to other schools. This process has been interrupted by Covid-19, however, at the time of my conversation Year 10 places had been identified for all 42 of the current Year 9 students at one of their parents'

top three preferences. Only three students had been offered a place at Oaklands, with half of the year group being offered places at a nearby University Technical College (UTC) where the normal point of admission is to Year 10. The other 18 students had been offered places across a range of other schools. The process was not as advanced for Year 8, but I was told that there would be places at Oaklands for all 34 if their parents wanted them. The Borough subsequently told me that all but seven Year 8 students had been offered places, with just four of them being places at Oaklands where there was also room for the remaining seven.

31. The absence of students in Year 7 was another matter which objectors said had been engineered to undermine the viability of the school. I have noted that on 3 May 2019 a request was made to the Office of the Schools Adjudicator (OSA) to reduce the admission PAN for this year group to zero. Because the admission arrangements had not at that point been determined as required by law, the adjudicator appointed to consider the request was unable to consider it. The closing date for applications for this year group was 31 October 2018, before consultation on closure began. There were only 29 first preferences expressed for the school and 36 places were allocated. Consultation on the closure of the school took place in the term between places being allocated and taken up. The consultation paper referred to the challenges of providing a broad and balanced curriculum for such a small group of students, initially saying that the Borough had decided that there would be no Year 7 intake in September 2019. Places had been offered and to have withdrawn them would not have been lawful. The text of the consultation paper was changed to say that parents could take up the offered places if they wished, but places were available at alternative schools.

32. A request was also made to the OSA to reduce the PAN for 2020 to zero. This request was also refused by the adjudicator for the reasons set out in determination VAR885 dated 24 October 2019. In the event, no places were allocated for September 2020.

33. While there may have been errors and misunderstandings in the handling of the matters I have discussed in the previous paragraphs, I am satisfied that if the school closes, there will be places available at other local schools for children currently on roll. The 10 closest secondary schools to Approach Road are all regarded by Ofsted as “*Good*” or “*Outstanding*” and so I have no concerns about the quality of education in nearby schools.

34. Considering the information above about where children who have already left the school have transferred to, or where places have been identified for children still on roll, it would appear that there is a limited demand for places at Oaklands from displaced students and so an expansion of the premises of a scale which would require statutory processes is not required.

35. When I raised these matters with the Borough, I was told that there remained the intention to acquire the Old Bethnal Green Road site for Oaklands; however, the acquisition was not necessary to accommodate the number of children displaced by the closure. I am

therefore satisfied that this proposal is not dependent on any proposal to expand the premises of Oaklands.

36. I am also required under this heading to consider the likely supply and future demand for places in the medium to long term. On 30 October 2019, the Borough's Cabinet considered a report: "*Planning for School Places 2019 /20 Review and Recommendations*". This report was based on the forecast of demand provided by the Greater London Authority (GLA). This report shows a small increase in demand is expected across the Borough, peaking in 2023 and remaining at the same level after that. The report says that the Secretary of State for Education has identified a free school provider for a new secondary school at London Dock, just over two miles from Approach Road, which "*will ensure that there will be sufficient secondary places, even when allowing for some of the changes that could result when decisions are determined over the future of existing schools, including the current proposal to consider the closure of Raine's Foundation*".

37. The objectors say that this new school would not be necessary if the closure was not approved and that the new and refurbished accommodation in Approach Road should be used to meet the increased demand for places. The provision of a new free school is a matter for the Secretary of State and he would have taken into account the need for places in the area and the impact on other schools before reaching his decision.

Equal opportunity issues

38. The statutory guidance requires me to have regard to the Public Sector Equality Duty (PSED) and consider the impact of the proposals on persons having the relevant protected characteristics who may be affected. Prior to publishing the proposals, the Borough undertook an Equality Analysis (EA); this EA drew criticism in the representations on the proposals. Much of the EA was predicated on the majority of students transferring to Oaklands which does not reflect where parents have actually asked for their children to transfer.

39. I have set out above the planning which has taken place for the children currently on the roll of the school. Efforts have been made ensure that children of all ages can transfer to a school of their parent's preference in a managed way. Given, as evidenced by the Ofsted judgements, the difficulties which there have been for many years in providing a good education for children at the school, I see no disadvantage to children in any of the year groups of moving to schools offering higher standards of education. Children moving to larger schools will benefit from a broader curriculum offer.

40. Representations expressed concern for children with special educational needs or disabilities (SEND). The DfE database states that 17 per cent of the children at the school were being supported for special needs and three percent had an Education Health and Care Plan (EHCP). These figures are broadly in line with those for the Borough as a whole as set out in its draft SEND strategy. There is no specialist provision at the school for any form of SEND. For children with an EHCP, the school they transfer to will be required to provide education as set out in that plan. For other children with SEND, all comprehensive

schools will be able to meet their needs. I see no adverse impact to children with disabilities from these proposals.

41. The school is a coeducational school, with a slightly larger proportion of boys (53 percent according to DfE database) than girls. Most alternative schools in the area are coeducational, although there are a few single sex schools nearby. The closure of the school impacts equally on boys and girls.

42. Representations expressed great concern about the closure of a school which has a designated religious character of Church of England. The 2017 Ofsted report said: "*the spiritual aspect is visible in school*". The DfE does not collect data on the religion of students and because the school is undersubscribed, and in any case has no faith-based oversubscription criteria, it is not possible to ascertain how many of its students are members of the Church of England, or whose parents placed them there because of the school's religious character. If any children were placed at the school because of its Church of England character, then I consider the advantages of being offered a higher standard of education and broader curriculum choices in other schools outweighs any disadvantage from not being at a school with a religious character. I will consider the wider provision of Church of England places under a later heading.

43. The DfE does record and publish data about the ethnicity of students at all schools. As pointed out in the representations, the distribution of the different ethnic groups is very different at the school to that found across the Borough. Across the Borough 59 per cent of students are of Bangladeshi origin compared to eight per cent at the school where the largest group is white British at 34 per cent compared to eight per cent across the Borough. There are other schools in the Borough with a very different ethnic distribution to the overall pattern, for example, the EA undertaken by the Borough includes figures for Oaklands where 80 per cent of students are stated to be of Bangladeshi origin.

44. The concerns for the different ethnic groups in the school may be summarised by a comment from the Trust in its representation: "*When they [majority ethnic groups at the school] are dispersed into other schools in the Borough they become minorities which can have significant impact on their safety.*" This may be a real fear for some, but the logic needs some scrutiny. Firstly, it implies that minority groups in all schools, including this one, may be unsafe; that is clearly not the case. Secondly, if the premise is accepted, it would lead to separate schools for each ethnic group which would not meet the PSED to "*eliminate discrimination*".

45. The remaining protected characteristics are: gender reassignment, marriage or civil partnership, sexual orientation and pregnancy or maternity. Representations made no suggestion of any concerns in these areas and I see no reason to think, with one exception, there might be. That exception is any possible detriment to the future employment opportunities of members of staff at the school who may be pregnant or on maternity leave when the school closes. Mitigation of this concern is set out in the EA produced by the Borough.

Integration, community cohesion and community services

46. I am required to consider the impact of the proposal on local integration and community cohesion objectives and to have regard to the Integrated Communities Action Plan. I have looked at some aspects of integration and community cohesion under the previous heading and see no conflict between these proposals and the steps set out on pages 11 and 12 of the Integrated Communities Action Plan. I have also looked at the Borough's website and can see no impact from these proposals on the integration and community cohesion related activities described on it. Representations referred to the use of the buildings by two churches for regular worship and other community use. If I approve the closure of the school, the buildings will remain and it will be necessary to work out a plan to manage them and it is possible that community use might continue, although there may be capacity at other venues where additional use will strengthen the viability of those venues.

47. While in the past a range of community activities have taken place at the school, for example basketball, there appears to be less of such activity at the moment and no formal extended services are being provided from the school.

Travel and Accessibility

48. As noted above there are 50 secondary schools within three miles of Approach Road. The closure of the school will not lead to any child having to take an unreasonably long journey to an alternative one.

Funding

49. The statutory guidance refers only to considerations about capital funding; no capital funding is required to implement this proposal. I will however comment on aspects of revenue funding here because there were representations on this issue.

50. Representations questioned the scale of the school's deficit and the consistency of the information provided about it. Data published by the DfE shows an in-year deficit for 2018-19 of £487.2K and that the school's revenue reserve is also £161k in the red. As the school's roll has fallen, its income has fallen; however, there are fixed costs that must be met for example heating and lighting of the buildings. Those figures are for a year in which there were 522 children on roll; given the pattern of parental preference which I discuss elsewhere in this determination, I consider it very unlikely that the school will recruit enough students to be able to balance its books and the deficit must be paid for with an impact elsewhere in the education budget.

Schools causing concern

51. The attainment and progress data for the school is set out above together with its recent Ofsted judgements. While representations argued that the latest Ofsted monitoring visit in December 2018 reported some progress in addressing the standards at the school the attainment in 2019 was no better than it was in 2017. Other representations argued that

the low attainment was due to the demographic profile of the school containing proportionately more children from groups known to be low attaining as a whole and so comparison with the Borough is unfair. Ofsted would have taken into account such contextual factors in reaching their judgements.

52. I have also looked at the attainment and progress of disadvantaged children at the school. Across the Borough, disadvantaged children make better progress than other children, at the school the progress of disadvantaged children appears not to be as good as it is for others.

Attainment 8	2017	2018	2019
School	37.7	33.2	37
Borough	49	49.3	52.3

Progress 8	2017	2018	2019
School	-0.55	-0.86	-0.7
Borough	0.37	0.29	0.45

53. Since Ofsted found that the school required improvement, the governing board was provided with support by the Borough through various strategies and with a range of partners. For whatever reason, none of these strategies proved to be successful or sustainable while conversion to an academy was found not to be viable. The establishment of the IEB in October 2018 was the final strategy employed.

54. While objectors have been critical of the timing of the interventions and of actions following them, I am of the view that the situation at the school is now such that further interventions will have little chance of succeeding.

Balance of denominational provision

55. The next factor relevant to this case that I am required to consider is the balance of denominational provision in the area. Many of the representations on the proposal concern the loss of Church of England places which would arise from closure of the school. This is not a concern shared by the diocese who support the proposal.

56. While the religious character of the school may be one reason why some parents express a preference for the school it cannot be denied that very few parents in the area want their children to attend the school. In October 2018, before closure was consulted on, just 29 first preferences were received for the school for September 2019. This represents less than one per cent of the number of children starting secondary school in the Borough

that year. Even before the first adverse Ofsted judgement in 2015, only 2.2 per cent of parents in the area were making the school their first preference, in 2011 the school had been the first preference for nearly four per cent of local parents. For 2019, less than 15 per cent of children attending Church of England primary schools in the Borough included the school as a preference, first or otherwise.

57. There is one other Church of England secondary school in the Borough, Sir John Cass Foundation School. This school is judged by Ofsted to be “*Outstanding*”. It offers up to 40 places on the grounds of faith, yet while it is oversubscribed it fails to fill all of the 40 places for which priority is given on the basis of faith. The balance of these places are then allocated according to the non-faith criteria. I have also been able to identify three other Church of England secondary schools within three miles of Approach Road.

58. From the figures that I have seen it would appear that all demand for places on the grounds of them being Church of England school places can be met if the school closes.

Other issues

59. Among the other issues raised by objectors were concerns that the environment around some alternative schools was not as clean as the environment around the school and this would have a detrimental effect on the health of some students with respiratory problems. No scientific evidence was put forward to support this claim.

60. There were other concerns about the future of the sites. As noted above, the Borough would like to acquire the Old Bethnal Green Road site to enlarge the premises of Oaklands. The Trust told me that it had started discussions with other parties about the possible use of the Approach Road site as a free school. The future use of the sites is not a matter for me in this determination and is covered by other legislation.

Conclusion

61. The long history of this school and its status as a Church of England school have created strong feelings against its proposed closure in some quarters. However, in the last 10 years the school has become less popular with parents in the area and just two of the eight representations received on these proposals were from people describing themselves as parents.

62. For whatever the reasons, the school has been in a spiral of decline for many years. Despite major capital investment and a range of interventions it has been unable to break out of a vicious circle and too few parents now want to send their children to the school for it to be viable educationally or financially.

63. There are many alternative schools in the area which provide a higher standard of education and these schools can accommodate children who would be displaced by the proposed closure.

64. Having considered the factors above I approve the proposed closure of the school.

Determination

65. Under the power conferred on me by Paragraph 17 of Schedule 2 to the Education and Inspections Act 2006 and The School Organisation (Establishment and Discontinuance of Schools) Regulations 2013, I have considered the proposal to discontinue Raine's Foundation School. I hereby approve the proposal.

Dated: 20 April 2020

Signed:

Schools Adjudicator: Phil Whiffing