

DETERMINATION

Case reference:	STP/000597
Proposal;	A statutory proposal to discontinue the Deanes School, Benfleet, Essex
Proposer:	Essex County Council
Initial Decision Maker:	Essex County Council
Appellant:	The Governing Body of the Deanes School
Date of Adjudicator's Determination:	25 February 2014

Determination

Under the powers conferred on me by the Education and Inspections Act 2006 and the Regulations made thereunder, I hereby uphold the appeal against the decision to discontinue the Deanes School.

The referral

1. On 29 November 2013 Essex County Council, (the council) wrote to the Office of the Schools Adjudicator (OSA) on behalf of the governing body of the Deanes School (the school), referring a decision that it, the council, as decision maker, had made on 28 November 2013 to cease to maintain the Deanes School, an 11- 16 foundation school, from 31 August 2016.
2. The governing body of the school has appealed against the decision on the grounds that the council's decision making process took insufficient account of representations made which included comments about pupil number projections and the community impact of the decision.

Jurisdiction

3. On 9 September 2013, having carried out a consultation as required for making a statutory proposal, the council formally published its proposal. The notice was in the form required by the Education and Inspections Act 2006 (the Act).
4. At a Cabinet meeting held on 28 November 2013 the proposer resolved to proceed with the proposal having considered representations made about the statutory proposal.

5. The school's governing body lodged an appeal that the proposal be referred to the adjudicator within the prescribed timescales. The proposer forwarded the appeal and its comments on it to the OSA, in accordance with the provisions of the Act and also the relevant Regulations, the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007 (the Regulations).

6. I am satisfied that this proposal has been properly referred to me in accordance with the Act and the Regulations and that I have jurisdiction to determine this matter.

Procedures

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

8. I have considered all the papers put before me including the following:

- a. the agenda and supporting papers for the meeting of Essex County Council Cabinet held on 28 November 2013;
- b. prescribed information from the proposer as set out in the relevant regulations;
- c. copies of objections received after publication of the proposals;
- d. the proposer's response to the objections and comments received;
- e. information and views submitted by the school's governing body;
- f. information and views submitted by Southend Borough Council, Castle Point Borough Council and Basildon Borough Council;
- g. comments made by the proposer in response to the appeal;
- h. the Ofsted inspection reports for the school and for The Appleton School and The King John School;
- i. maps showing where the pupils who attend the school live;
- j. a very large number of letters and other material from parents and other interested parties; and
- k. further correspondence and information submitted by the school, the council and other correspondents following the original submissions.

9. On 30 January 2014 I visited the school to view at first hand the school and its locality. I held a meeting with representatives of the school and the council together with a representative from Southend Council, from Castle Point Council and from Basildon Council. I have considered all the information and representations put to me at that meeting and subsequently.

10. On the evening of the same day I held a public meeting attended by over

300 parents, pupils, two local Members of Parliament, representatives of the community who use the sports and nursery facilities, council representatives and others at the Deanes School. I have considered all the information and the representations put to me at that meeting and subsequently.

The Proposal

11. The proposal is that Essex County Council intends to discontinue the Deanes School from 31 August 2016. The proposed transitional arrangements are:

- Year 7 pupils will not be admitted in September 2014.
- Pupils in Year 7 in September 2013 will continue through to Year 8 at the Deanes school and transfer to King John School or Appleton School to start Year 9 in September 2015.
- Pupils in Year 8 in September 2013 will transfer to the roll of the Appleton School or King John School to start Year 9 in September 2014.
- Pupils attending the school in Years 9, 10 and 11 in September 2013 will be able to complete their GCSE exams at the school.

Background and Context

12. The school is located on a large site with extensive sports fields in Thundersley which is a part of a larger conurbation including Benfleet and Hadleigh within the Castle Point Borough Council area. On entering the school down its access road, a house purchased by the council to allow a wider access road and more parking is on the left of the entrance and then the Enchanted Wood Nursery is located beyond and on the left with the school buildings ahead. The extensive sports halls are located further round the access road at the rear of the school and overlooking the playing fields and hard play areas.

13. A rebuild of the Deanes School had been planned as an element of the Building Schools for the Future (BSF) programme, together with a re-location and rebuilding of Glenwood Special School onto the Deanes school site to enable co-location and collaborative working. The plan was for the nursery, the special school and the secondary school to be located next to each other with some sharing of space and facilities. In June 2010 the council was informed that the BSF programme had been stopped by the government and the funding for this project had been lost. Capital investment at the neighbouring Appleton and King John Schools was also lost when the BSF programme was stopped. The council was committed to the relocation of Glenwood School and wished to improve the premises of the Deanes School. In 2012, the council decided to allocate £22.85m from its capital programme from 2013 onwards to enable the work to go ahead. Prior to this, the council persuaded the school not to seek academy status alongside the other two local schools so that the capital funding could be allocated to the project.

14. In June 2013 the council published its consultation document "The Future of the Deanes School" and within it reported that numbers of pupils at the Deanes school had fallen and the fall in numbers raised questions about the educational viability of the school and brought into question the proposed capital

expenditure.

15. The school had a capacity of 1120 pupils in January 2010 and there were 1025 pupils on roll. In January 2013 the school capacity was 1018 and there were 793 pupils at the school. Discussions took place to reduce the planned size of the rebuilt school to 750 pupils. In September 2013 the number of pupils in the school reduced to 600 when a large Year 11 group left to be replaced by a much smaller Year 7 group, this left 41.1 per cent of places surplus at the school. The council has made much of the percentage of surplus places, but the focus on removal of surplus places has had a lesser importance in recent years as the need for pupil places has increased in different areas at different times and a flexible response has been needed.

16. The school is judged to be good by Ofsted and educational standards have not been considered by the council to be an issue for the school.

17. In its report to the Cabinet Member for Education and Lifelong Learning on 30 August 2013, the council said that it had considered that there were three possible ways forward for the school:

- Closure from 2016 with an expansion of places at the King John and Appleton Schools;
- The school continues and further reviews take place in the future of its on-going viability;
- The school continues and further reviews take place in the future of its on-going viability and the expansion of places at The King John and The Appleton Schools.

18. At a meeting of the council's Scrutiny Committee on 14 November 2013 a question was asked about where these options had been discussed in order to decide which option to pursue. The response was that these options had been discussed informally.

19. In June 2013, the council took forward the first option and published a consultation document. It established a Task and Finish Group of the council's People and Families Scrutiny Committee to examine the proposal. This group worked through July and August 2013 and submitted its findings in August 2013. The report was presented to the Cabinet Member for Education and Life Long Learning on 30 August 2013. The group concluded that on the basis of the evidence examined there was insufficient evidence to justify the closure of the school.

20. The details of the consultation process, the responses received, the views and recommendations of the People and Families Scrutiny Committee and the council's comments were set out in a report to the Cabinet Member dated 30 August 2013.

21. Following consideration of the report, the Cabinet Member authorised that a statutory proposal to close the school be made and public notices be published. At that point there was an opportunity for any member of the scrutiny

committee to “call in” the proposal but no one did so in the required timeframe. The statutory notice was published on 9 September 2013 and the representation period ended on 21 October 2013.

22. In view of concerns raised in the task and finish group report about the forecasting methodology, the council commissioned an external review of its forecasting process by a consultant recommended by the National Foundation for Educational Research. The review found that the methodology was sound.

23. A paper was taken to the council’s Cabinet on 7 November 2013 about whether or not to discontinue the school. It was decided that the school should be closed. The decision was subject to six different call in notifications and the People and Families Scrutiny Committee resolved on 14 November 2013 to refer the decision back to Cabinet on 28 November 2013 where the call in matters were discussed and the Cabinet reviewed its decision. The Cabinet decided to confirm the decision to close the school.

24. On 29 November 2013 the school’s governing body asked the council to refer the decision to the Office of the School Adjudicator in order that the school could appeal against the decision. At the same time as the closure decision was being taken, the school had begun its application to the Department for Education (DfE) to become an academy. The outcome of this application was not known at the time this determination was written.

25. The proposal as it is published is a decision to close a school and relocate the pupils to the two neighbouring schools on the grounds that the projections show a diminishing school roll to the point that the council considers it is unsustainable. This is the proposal and appeal that I shall consider. There are some contributory factors that I have also considered in order to come to a view about the proposal. The fact that the council had a long standing plan to rebuild the school firstly through the BSF programme and, when that was cancelled, through the council’s own capital programme cannot be ignored. At the same time the school roll fell from 1025 pupils in 2010 to 793 in 2012 and 600 in 2013. Alongside this rebuilding programme, the council was also intending to co-locate a local special school with a parallel new build. The council wrote to me at the time of my visit to the school to say that whatever decision I made in respect of the school closure it had decided not to commit further capital to the school and that £4m had been committed to expanding the two neighbouring schools.

The Appeal against the Closure Decision

26. The school believes that:

- the housing growth in the area has been underestimated and is concerned that the council has stated that if the school is closed, a secondary school may be required on the site in a five to ten year time period;
- it is wrong that the pupil forecasting model assumes that King John and Appleton Schools will fill to capacity and any surplus pupils are allocated to the Deanes School;

- insufficient regard has been given to the community impact of the closure of the school on the community sport facilities;
- insufficient weight has been given to the support that the school gives to the nursery and the potential consequences of this;
- the school is a good school and there are no grounds to close the school on the basis of poor performance;
- there is insufficient detail concerning alternative provision for displaced pupils and particularly those with special educational needs (SEN) if the school closes;
- a visionary co-location of a mainstream secondary school with a special school will be lost and this will be to the detriment of children in South Essex;
- the council has reneged on previous agreements to rebuild the school. It points out that the council asked it not to seek academy status alongside Appleton and King John Schools in order that the capital build and co-location project could be carried out;
- the council has sought not to invest in the building in recent years because the new build was being planned, this has led to the school becoming tatty and this has affected parental views of the school; and
- the council's assertion that 600 is the minimum sustainable size for a school is inconsistent with the fact that there is a secondary school with 350 pupils elsewhere in the county that the council has no plans to close.

Consideration of Factors

27. I must take into account the provisions of the Act, the Regulations and the DfE Guidance on "closing a mainstream school" published on 1 February 2010 (the guidance) that apply to this case. The guidance sets out the matters that decision makers must take into account when making a decision about this school closure. New guidance was published by the DfE in January 2014, but this does not apply to this proposal that was made under the 2010 guidance. I have nevertheless looked at the new guidance. I have considered the statutory process and the proposal for closure afresh taking careful account of the arguments put to me by the council and the school, as well as the parents and many other interested parties who have written to me or made submissions.

28. I would like to express my appreciation of the time, the thought and the care that has gone into the many submissions. I have read and carefully considered everything that has been sent to me and the considerations below take account of the factual information and views that have been expressed to me.

29. I began by taking into consideration the factors that the guidance requires decision makers to consider, these are grouped under the following main headings:

- the statutory process;
- the effect on standards and school improvement;
- the need for places;
- impact on the community and travel;
- school characteristics;
- specific age provision issues;
- provision for Special Educational Needs;
- other issues.

For each of these headings and their sub headings I shall be considering the council's case for closure, the comments from the school and from other parties and any other relevant information that will help inform my decision making.

The Statutory process

30. The council has followed the guidance in drawing up its consultation and in publishing its statutory proposal. The minutes of the consultation meetings and the notice itself provide evidence that the guidance has been followed. In addition to the statutory notice, the prescribed information was set out in the full statutory proposal that was available upon request and referred to within the notice. The consultation took place between 10 June 2013 and 22 July 2013.

31. The school expressed concern that the pre-statutory consultation process was not handled well and that it went within one week from taking in part in planning meetings with buildings officers to progress the re-building of the school to an announcement that the building project was to be cancelled and the school was now to close. The correspondence shows that this was the way that the school was informed about the change of direction within the council. I shall return to this issue in due course but in terms of the statutory process followed once this change of direction was made I have found no evidence that the council has failed to follow the guidance in respect of the consultation and publication of the statutory notice.

Effects on Standards and school performance

A system shaped by parents

32. The guidance refers to the aim of the government at the time to create a school system shaped by parents which delivers excellence with equity and where weak schools can be closed quickly and the best schools are able to expand and spread their ethos and success. In this context the council accepts that the school is not a weak school either in terms of the pupils' performance or in terms of Ofsted judgements. It expresses its concern about the school's viability within a context of a falling roll which could lead to falling standards and the belief that the pupils would be better served by transferring them to the two

neighbouring schools that are judged by Ofsted to be excellent schools.

33. The council's pupil number projection system has been the subject of much comment. It uses trends in parental preference to inform its projections alongside a range of other data inputs. The external consultant's report that reviews the council's system concluded that the council uses best practice and that the council's system is similar to that used by most other councils in projecting pupil numbers in schools. The school has not challenged the system itself but draws attention to some issues that it considers affect the trend in parental preferences that are described by the projection system. The school has pointed out that the way that the system works in this area is to assume a low take up from parents putting the school as their first choice and that the other two schools in the area will fill to capacity and then remaining children are allocated to the Deanes School. The council responds by saying that this is a realistic reflection of what happens and that for this process to change not only will more parents in the school's catchment area have to choose the school instead of other schools, but also, since there will be insufficient children in the area to fill all the schools it will be necessary for parents from out of area to choose to send their children to these schools. The council believes that this is an unlikely scenario. The school points out that it already attracts a proportion of its pupils from out of area and considers that it would be more successful in attracting pupils if the uncertainty over the future was removed.

34. The council has provided figures that show the preferences for applicants to the school and the neighbouring schools for the 2011, 2012 and 2013 admission processes. In each of these years the catchment area admissions at the school were less than 25 percent of the total. Ten places were available in 2011 for children identified by the Lawn Tennis Association or Badminton England as having aptitude for tennis or badminton and all these ten places were filled but in 2012 and 2013 the admissions on the basis of aptitude in sport only attracted three and then two applicants for the 18 available places. The council points out that for the King John and the Appleton Schools, the number of pupils applying for places from the catchment area have also declined over the period as a result of reducing cohort sizes, but the schools filled any available places from those who lived outside the priority areas for the schools. This is reflected in the pupil number forecasts.

35. The school argues that parental preferences have been further affected in recent years by the fact that when the other two schools became academies, this school was asked by the council not to seek to become one because it could not then receive the capital funding available. This disadvantaged the school at the time but it was persuaded by the council that this would be short term disadvantage for a longer term gain. The school also argues that from the time that the council had decided to invest in a new building for the school, all maintenance work was stopped and the lack of investment has also affected the perceptions of parents and led to fewer seeking places for their children while there were places available at the neighbouring schools. This issue has now been exacerbated by the uncertainty around the future of the school. The council argues that the reduction in parental preference for the school had started before there were discussions about a rebuild, but the first large fall comes in the year that BSF funding for a rebuild was withdrawn and it was not

until 2012 when the council proposed its alternative programme. The figures show the numbers falling from 1025 in 2010 to 793 in Jan 2013 and 600 in September 2013. Parents have commented in their communications that they would not have wanted their children to have had their education disrupted while the building work was going on and so decided to seek an alternative school. This in turn has affected the parental preference trends that are then extrapolated into the future.

36. As the school in the area with spare capacity, the school reports that it has experienced high levels of mid-year admissions in the last couple of years from pupils that have left neighbouring schools. Integrating these pupils into the school has taken additional resources and brought other challenges to the school that the school considers that it has managed well. It is concerned for the young people of the future if such moves are not possible because the local schools are oversubscribed.

37. The council has stated that it is difficult to predict if a new build will make a large difference to parental opinion at the school and it does not model hypothetical situations in its projections so has not reflected this in its forecasts. The council gave examples of schools that had been rebuilt and where there was little change in the parental preferences. The school responded by giving the example of a different school that is not far away where it is oversubscribed following a new build. The school's view is that the council is being pessimistic about the potential impact of a new build. The council has stated that the falling roll is its cause for concern because it will lead to falling standards. The school has pointed out that the projections show that the roll falls and then plateaus. The question that cannot be answered by either party is whether the discussions and uncertainties about the future of the school have been a contributory factor and whether a secure future for the school will cause numbers to increase as parental views change. Irrespective of the answers to the questions, the key issue is whether a school of between 450 and 600 pupils is sustainable. The school has modelled the curriculum and the budget to show that it can be done and despite the council's expressed concern, there are schools of this size elsewhere in the county.

Standards and performance

38. The school was judged to be good in the inspection that took place in 2012. The council has confirmed that standards are not part of its argument for closure although it has speculated that if numbers fall then the school's ability to deliver a broad curriculum is reduced and standards could fall. I have seen no evidence that the council has discussed this with the school.

39. The King John School and The Appleton School were both inspected in 2013 and were judged to be outstanding schools. The council's view is that standards in the local area will be enhanced by closing The Deanes School and expanding the other two outstanding schools. The council has not explained its thinking here but its assumption appears to be that the schools will continue to be outstanding with each having 150 additional pupils and as a result more pupils will experience an outstanding education. The council has not explained what it believes will happen to the other 150 to 300 pupils who would have been expected to attend the school that on the current pattern of attendance at least

some of whom live within the council's area.

Diversity

40. The guidance refers to “a more diverse school system offering excellence and choice”. The council argues that by closing the school there will still be a choice of outstanding schools in the area for parents to make and it repeats its concern that the school's numbers make it potentially unviable and that as a result the school will be unable to continue as a centre of excellence in sport. The council has stated that it will seek to secure a community partner to continue the sports facilities for the community but the sports specialism that the school provides will be lost. The school argues that the centre of excellence in sport is an important feature of the local provision. Many parents have commented through the consultation process that they or their children have appreciated the care with which the school works with the individual needs of their children and the fact that the school is smaller than its neighbours is an important benefit for their children who they feel have received more individual attention as a result.

Every Child Matters

41. The guidance asks decision makers to consider how displaced pupils will continue to have access to extended services and other opportunities and measures to address barriers to participation. The council is clear that the alternative schools have ample opportunity for such access for all pupils. However, some parents expressed concerns about the transitions for their children. Concerns that were raised included the child feeling lost in a large school, lack of space for eating lunch, lack of the wide range of sports facilities and lack of a flexible curriculum for those who were participating at a national level in a sport.

The Need for places

Provision for displaced pupils

42. The council intends to make 30 additional places per year available in The King John School increasing the published admission number (PAN) from 320 to 350 and the overall capacity of the school from 1600 to 1750 not including the sixth form; and 30 additional places at The Appleton School increasing the PAN from 240 to 270 and the overall capacity of the school from 1200 to 1350, not including the sixth form. Both these schools are academies so are their own admissions authorities. They are at a distance from the school of 0.86 miles and 2.07 miles respectively. The council has offered each school £2m to undertake the necessary works to increase their pupil numbers. Planning permission has not yet been obtained for these expansions and Castle Point Borough Council has indicated that it will challenge the County Council's view that as it is funding the work it will be responsible for determining the planning permission. The Borough Council has raised issues about the amount of development on the available sites and congested access routes to the schools.

43. The school and parents have expressed concerns about whether there

will be sufficient places in the schools for the displaced pupils now and in the future. The council has explained that the projections show that the schools will fill up with local pupils from the Castle Point area and when they are at capacity with local children, they will no longer be able to accept out of catchment pupils. The council's projections assume that these out of area children will find places in one of their local schools. The school has presented figures for housing growth in the area that show there could be insufficient places in the future. The council has produced alternative figures that show that they project there will be enough places for local pupils if the Deanes is closed and they confirm that, in years to come, pupils from out of area will need to seek places in their local schools rather than travel to the Castle Point area. The council has, however, recognised that there may be a need for a replacement school in the area at some unknown time in the future and it is for this reason that the council has said that the site would be retained for educational use.

44. Parents have raised concerns about the lack of detail in the expansion plans for the two schools and point out that the 2013 Ofsted report for The King John School refers to congestion in the school when it says "despite pockets of congestion and crowding in some corridors, students behave respectfully and courteously to one another at all times". Parents have expressed a range of concerns about expanding these schools and what they see as the potential overcrowding that might follow.

Surplus places

45. The council has decided to close the school on the grounds that the projected pupil numbers at the school are projected to vary between 448 and 555 pupils per year between 2014 and 2023. It states that the current capacity of the school is 1018, and this represents surplus places at a level of around 50 per cent throughout this period. The school has argued that the rebuilt school would be smaller so there would be fewer surplus places; however, the council is clear that it does not intend to invest resources in the school with the result that it considers the number of surplus places against the current assessed capacity of 1018 pupils. The simple measure of space available is not the only issue here since where space is available schools quickly adopt strategies for making best use of it and it may not be helpful to put too much weight on the percentage of surplus space in this case. For example, in the plans for co-location of the school and a special school there was consideration being given to the shared use of space between the schools.

Pupil number projections and housing growth in the area

46. The projections for housing growth have been a major component of the school's argument against closure. I have already reported that the school is not arguing about the system that the council uses to derive its pupil number projections, but about the weighting given to parental preference and the weighting given to housing growth in the figures.

47. I have also commented that the council's projection system was scrutinised by a consultant with experience in this area who confirmed that the council's overall system was similar to that used by other councils. The council has a comprehensive pupil projection system that has been shown to be

accurate when projections are compared in retrospect to the actual numbers. While no forecasting can be treated as fact, I have found no evidence to suggest that this projection system is inaccurate or that figures have been produced to make a particular case. The forecasting team has the task of continually monitoring changes and updating projections accordingly. One of the areas of concern in this case is that it has proved difficult for the school and others not involved in the data collection and processing to be able to find out the base data used and then understand the manipulations that have been done within the modelling. I have noted that there is no disagreement that the annual birth rate in the Castle Point has been reducing year on year. This is verified by the NHS birth data for the area. The projections reflect the falling birth rate and also as already discussed, reflect trends in parental preferences.

48. There has been a high volume of correspondence about the housing number projections for the area. A key issue is that the local district council, Castle Point Borough Council, has not adopted its local plan and so there is uncertainty about how many houses might be built in the area and where and when. At the meeting on 30 January 2014, the chief executive of the borough said that the number of new dwellings could be 4000 or it could be as many as 7000 dwellings over the next twenty years, depending upon the outcome of current consultations on the local plan. The school and others claim that insufficient account of this has been made so that the projections are kept as low as possible.

49. The council's forecasters explain that experience has shown that for every house built there is a possibility of 0.2 children in each secondary age year group. This figure is confirmed by the external consultant as at the higher end of the range used by other councils. If it is assumed that all the houses are built and that the completions are phased evenly over the 20 year period, then working with the range given by the borough, the additional number of secondary age pupils in the area would be likely to be in the range of 40 – 80 per year for each of the next 20 years shared between the local schools. Basildon Council stated that they, too, are consulting on their local plan and this could result in new housing adjacent to Castle Point mainland. These houses will not be in the priority areas of any of the Castle Point schools and the council system allocates this housing growth to that area's local schools. The school argues that it could lead to more pupils choosing schools in the area and an allowance should be made but the council counters that there are sufficient places in the local schools so there is no reason to supply additional places in this area.

50. The level of detail in the discussion about the figures between the council, the school and other parties has not been illuminating and has failed to secure a shared understanding or agreement on what the projections might be and what the range of uncertainty might be resulting from changes in parental preference and from housing growth. The simple calculation above has helped me to understand the scale of the concern that has been raised in relation to the housing growth. The council has used all its available intelligence to produce projections for the school. The school has argued that the council figures are too low.

The impact on the community and travel

51. The school has two community projects that it believes will be damaged if the school closes. The first is the Enchanted Wood Nursery which has been recently built and was considered at the time to be the first phase of the school's new build. The council has said it will ensure that the nursery can continue, but the school argues that the trustees are connected with the school and it believes that the nursery will not survive without the school's support.

52. The second and larger project is connected with the school's sports specialism. The sports facilities and the outreach sports staff employed by the school provide a traded community service to 40 local primary schools and local community groups by providing on site sports coaching in the schools and hosting interschool events using the Deanes School sports facilities. The BATIC Trust (Benfleet and Thundersley Inter-School Cluster) is a collaboration of 15 primary schools with the Deanes School who work collaboratively to provide a range of activities for their pupils and are supported by the Deanes School sports manager and assistant who facilitate these activities. For the wider community, the sports centre is managed by the Deanes governing body and has 3900 members and 20 local clubs based there. The income from these activities contributes towards the facilities and the staff. Representatives of some of these groups spoke passionately at the public meeting about the leadership and support the school was providing to the community. The council has recognised the provision and has stated that if the school closes it will seek a community partner to take on the running of the facilities and programme. Beyond this statement there is no evidence of further consideration of these matters.

Community Cohesion and race equality

53. The community have spoken out strongly about their local school and there have been strong representations about the benefits of continuing with the community sports projects and all that they bring to the area.

Travel and accessibility for all

54. The travel to school area is an urban area which overlaps in part with the areas of the other two local schools. The distances are such that pupils living within the priority areas of any of the three schools can walk to the others and many do. The school attracts pupils from outside its priority area, and for those pupils it is possible that there is a local school closer to their home address.

School Characteristics

Equal opportunities

55. There are no specific equal opportunities issues that have emerged in the discussions.

Specific age provision issues

14-19 curriculum

56. The Deanes school is an 11-16 school and the other two schools in the area now have sixth forms. The local FE College has commented in the consultation that it may experience a reduction in students if the school closes and the pupils move to schools with sixth forms.

Provision for Special Educational Needs

57. Many parents have mentioned how their children have been well cared for at the Deanes School and have commented that their child who has special educational needs was well supported by the school and that the small size of the school greatly helped their child to cope in school.

58. The council's equality impact assessment was criticised within the consultation process on the grounds that it looked at the general case of special needs provision but failed to look at some of the specific needs of individual children at the Deanes School. The council responded that Ofsted had judged the alternative schools to be outstanding and that this included their provision for special educational needs. The council's argument is a general one and there is no evidence that the council has looked at the individual needs of this group of young people and considered how their individual needs would be met at one of the two alternative schools.

59. The argument that the small size of the school assists many of the children with special needs is possibly correct; however, this does not provide evidence that the larger schools cannot provide the support for the individual child.

Other Issues

Finance

60. The council made it clear on several occasions in the discussions that finance did not drive the closure proposal. However, the council has also said that it must prioritise its capital spending and ensure value for money. It no longer considers that investing in a rebuild of this school is good value for money. In its committee paper it sets out the £11.3m cost of rebuilding the school and argues that this could be spent on other projects. It then lists the costs of closing the school as £4m to provide additional places at neighbouring schools; £2.5m additional costs for the special school because there will not be shared facilities; £1.5m closure plan costs; £0.549 redundancy costs; £0.06m boarding, drains and winterising costs. This totals £8.609m plus either £0.32 site maintenance costs for 2 years or £0.6m demolition costs giving costs of between £8.93m and £9.21m which reduces the potential saving to the council considerably.

Transitional arrangements

61. The council has set out its plan for transitional arrangements for pupils

through the closure period. The current cohort of pupils seeking secondary places at the Deanes for 2014 were advised to put The King John and The Appleton Schools as their second and/or third preferences when they were completing their application form for a secondary school place so that in the event of the council deciding to close the school their second and subsequent preferences could be promoted to first preference so that they would not be disadvantaged. They have since been advised that if a decision is made that the school should remain open then they may change their allocated school and re-express their preference for The Deanes School where there will be places available. Arrangements are being made for the alternative schools to change their priority areas to include the existing priority area for The Deanes School. The council has stated that it will provide support for those pupils who remain at the school as it reduces in size and will ensure that there are sufficient teachers and a headteacher to take them through to their examinations at the end of Year 11.

Further Considerations

62. In drawing these issues to a conclusion I have endeavoured to separate facts from opinion in as much as this is possible when some of the arguments have concerned projections about the future. I first considered the council's statutory proposal to close the school.

63. The council's argument is that although this is a good school, pupil numbers are falling and are projected to settle in the region of 500 pupils in a building that has a capacity for 1018. The council has stated that this decision for closure is not about finance but about its fear that a school of the size projected will be financially unsustainable and unable to deliver the curriculum effectively. The council considers that if the displaced pupils are transferred to the two larger and expanded neighbouring academies that are judged to be outstanding then the standard of education in the area will be improved.

64. Having considered the proposal and the objections to the proposal to discontinue the school against the relevant DfE guidance, I also considered the new DfE guidance for the sake of completeness even though it has no statutory impact on this case, but have kept it in mind as I consider the other matters which have been brought to my attention.

65. The first matter is the challenge to the accuracy of the council's pupil number forecasts in relation to housing growth. I have considered the data for housing growth and noted the potential for uncertainty in these figures. However, even if the most optimistic forecasts are used, there seems little evidence from the current information that the pupil numbers in the area are going to increase as a result of housing growth faster than they will reduce as a result of the falling birth rate. I am satisfied that the council has taken a realistic view about the potential housing growth in the area and has used the data that have been made available to it at any given time as well as its own sources of information. The projections cannot be taken as fact but the council's data projections are routinely compared with the actuals when they occur and I do not consider that the intense criticisms made about the accuracy of the projections in the consultation are justified, nor have I seen any evidence that the projections have been modified in any way to make the council's case for

closure. There is an issue about communication and how effectively it has been possible to share the detail of the input data and the way that has been processed to reach the projections. The explanations have been detailed and have not necessarily answered the questions that were being asked with the result that the differences of view between the parties about the housing projections have remained unresolved.

66. The second matter is about the data used to project parental preferences which have changed rapidly since 2010 and could change in the future. The projections roll forward the current preference levels into future years and the school thinks that this is unfair and consideration should be given to the potential outcome from successful marketing. The council has stated that preferences could change if the school is successful in attracting more of the pupils who live in its priority area and more pupils from out of area but considers that this change is unlikely to happen. It is possible that the school may be right and parental preference may increase if the uncertainty is removed, however, it seems unlikely that the change will be a large one in the next couple of years. While there may be disagreements about the detail of the projections, the broad picture remains one of a school with a roll that is likely to be in the region of 450 - 600 pupils over the next five to ten years.

67. The third matter concerns the size of the school. The council has asserted that a secondary school with fewer than 600 pupils is too small to be financially sustainable or to be able to offer the full breadth of the curriculum. The school refutes this and has provided an outline budget and curriculum model to demonstrate the point. At our meeting, the council explained that the figure of 600 was not a fixed point below which all secondary schools became unviable, but it was a guide that had informed the council about whether or not to invest in the school rebuild. It accepted that there are other schools of this size or smaller in the county that it is not planning to close. The council talks about the school roll continuing to fall yet its projections show that it plateaus between 450 and 600 pupils for the next ten years. A school of this size will be a small secondary school but I have seen no hard evidence in the consultation that it would not be viable or that the size alone is a fundamental reason to close it.

68. The fourth matter concerns the finance issues behind this proposal. The council has emphasised that the closure proposal is not driven by financial issues and that the key issue is the falling school roll. However, it was the council's decision to halt the funding of the rebuild that led to the closure proposal in the first place. The council stated in a letter to *me* "... the decision for Essex County Council was based not on a pre-conceived optimum school size, but in relation to whether the commitment of £11.3 million public money could be justified at a school where there was compelling evidence that numbers would fall to a low level, and at a time when there were competing priorities for capital investment where a more compelling case could be made. If The Deanes had not needed such a large investment to provide a suitable learning environment it is likely that closure proposals would not have been brought forward at the time they were."

69. At the time of my meeting at the school, the council wrote to me to point

out that whatever decision was made about the future of the school, the council has resolved not to invest any further capital in the school. It later wrote to say that it had now committed to providing the additional places in the King John School and the Appleton School and that this would now proceed irrespective of whether the school was closed or not.

70. I do not have the jurisdiction to suggest how a council should allocate its resources but I note that the school and the council still disagree about the comparative costs of retaining the school, or closing it and investing £4million in the two nearby academies to enable the displaced pupils to be admitted. Whichever figure is used, the saving from the initial £11.3m appears modest and does not take account of any additional costs that the commitment to secure the community sports facilities and the community nursery might require.

71. The fifth matter I considered is the weight given to the community impact of this proposal. The 2012 ESS0005 scope of the works project brief for the Deanes and Glenwood SEN co-location project set out the following objectives for the scheme:

“The co-location of the Deanes and Glenwood Special School is considered to be a visionary and pioneering way to integrate mainstream and special needs education, and will be one of the first to adopt this approach in Essex. The importance of the scheme and the benefits that it will provide for both pupils and the wider community are of paramount importance.

- The provision of a secondary and special school within the Benfleet area plays a pivotal role, especially with the opportunities for community use of the school premises outside hours, thereby facilitating community regeneration and greater social cohesion.*
- A continuation of secondary school education within this area will maintain continuity with existing primary schools. Both schools are part of the BATIC Trust (Benfleet and Thundersley Cluster Group) that is working proactively to meet the needs of learners across all key stages.*
- The Deanes School is currently exploring and working with external partners to address the skills shortage in Health and Social Care and Traditional Trades.*
- The existing site is integrated with the existing transport infrastructure and it is considered that the proposals will enhance this further.*
- Co-location of the two schools will provide a unique opportunity for shared resources and in the future the ability for pupils to integrate learning further.*
- The improvement of the learning environment will be a major contributor to raising attainment levels and will provide opportunities to introduce new subjects and new ways of learning.*
- As Investors In People School(s) committed to “Growing our own leaders” through the Teaching School Alliance, there is an opportunity to become*

a centre for Teacher Training to include the delivery of SEN related programmes.”

72. Within the papers that I have been given, I have seen no evidence of any discussions or consultation that has taken place in relation to the loss of the perceived benefits of this co-location plan if the school were to close. The council has acknowledged the importance of the nursery and the community sport provision and it has made clear statements of support, but has not come up with a plan to secure these projects for the future in the event of the school closing or identified whether there would be any cost implications in doing this. It makes no mention in its papers about any loss of benefit from the co-location project not proceeding. I have seen no evidence of a cost benefit analysis or similar that has been carried out in making the closure decision and its effect on the nursery, the special school proposal and the sports provision.

73. The sixth matter is that displaced pupils will go to the two neighbouring academies. The council proposes to fund each to enable them to expand to take an additional 150 pupils at a cost of £2m per school. Concerns have been raised about this on three counts. The first is that there are doubts that the estimated £2m will be sufficient to make them suitable for taking an additional 150 pupils each. The second is that the planning permission for this work has not yet been agreed and Castle Point Borough Council has stated that there are issues relating to the congested access to the sites and the ability for the sites to absorb more buildings. The Ofsted report for the King John School refers to congested corridors. The County Council has claimed to be the planning authority for this development but the Borough Council has said that it will challenge this because the schools as academies are independent schools. The third point is that in order that the schools will be able to accommodate all local area pupils they will not be able to admit out of area pupils. Parents living out of area think that this reduces their right to a diverse range of schools. Of these points I think the first two are particularly significant.

74. The seventh matter is that parents have expressed concerns about the provision for children who have special educational needs at the alternative schools and there have been claims that the Equalities Impact Assessment failed to cover the full range of possible disabilities. The council's argument is a general one and there is no evidence that the council has looked at the individual needs of this group of young people and considered how their individual needs would be met at one of the two alternative schools.

75. The eighth matter that I have considered concerns the period when the funding decision was made and before the start of the statutory consultation. The council made a decision that it was withdrawing capital funding to this school because it decided that the money would give better value elsewhere and because the projections showed that the numbers were falling. In its committee paper the council mentions three possible options for going forward. It states that the closure option was the option selected to take to consultation. There has been no evidence presented that these three options were discussed either within the council or with the school concerned. The school received notice that the funding for the new build had been cancelled and that the council had decided to close the school without any form of prior warning, informal

consultation or discussion. The school feels strongly that the council has reneged on its previous agreements to rebuild the school. It points out that the council asked it not to seek academy status alongside The Appleton and King John Schools in order that the capital build and co-location project could be carried out and the school went along with this because it felt that an agreement had been reached.

76. I observe that in June 2013 the school was the subject of an objection by another school to its admission arrangements for September 2014. The published determination did not uphold the objection. The determination records that the council supported the school's admission arrangements.

Conclusion

77. The council has presented its argument for closure of a good school on the grounds of falling rolls and that with around 500 pupils it would be unsustainable. It refers to surplus places and to saving the £11.3m allocated to the project to rebuild the school. Displaced local pupils would be transferred to the neighbouring outstanding academies which would be expanded to accommodate them. The council claims the overall effect would be to increase the educational standards in the area. I note that within the council's papers the costs associated with the closure would be up to £9.21m and do not include an assessment for some aspects of the school's current work such as the sports provision. I also note the Task and Finish Group report that concludes that there is insufficient evidence to close the school and that at the time the decision was made to close the school at the council's Cabinet meeting the decision was called-in by six different members of the scrutiny committee.

78. The school and its supporters have raised concerns about the decision taken. There are eight key issues that I have considered:

- I do not think that the housing numbers are as big an issue as the school has put forward but I accept that the uncertainty about future house building plans makes the projections difficult to manage. The projections will be routinely updated.
- Parental preferences have fallen and this follows the underlying trend of the falling birth rate in the area but the uncertainty about the school rebuild seems to coincide with the steeper fall in numbers over the last three years. The council's projections show the number levelling and remaining within the range of 450 – 600 over the next ten years.
- This is the projected size of the school and the council has argued that as numbers fall then the school standards may fall. In the projections the school numbers level out, so the issue is whether or not a school of this size is sustainable? The council has agreed that it has schools of this size or smaller in the county and has no plans to close these schools. In saying this it answers the question.
- The council has said that finance was not the main consideration when considering closure. However, if numbers are going to level out and the council has other schools that it is not intending to close with similar or fewer

pupils the argument comes down to the cost saving. The cost saving is not the full capital cost and it is open to question what an options appraisal or cost benefit analysis would show of the relative values of closure or not and the benefit or not of the co-location with the special school.

- The community benefit of the sports facilities and nursery have not been given sufficient consideration and it is unclear how these would be sustained and whether this would be cost neutral.
- The expansion of the two neighbouring academies raises some issues about the capacity of the buildings and the sites to absorb more pupils; the lack of clearly costed projects; and obtaining planning permission.
- The council has not looked at the impact of the proposal on the individuals within the group of young people who have special educational needs.
- The council failed to engage with the school about the three potential options for moving forward and presented the school with the decision that had been made. This is particularly significant in the context that the school felt that it had made an agreement with the council not to seek academy status in return for the new build and the co-location project with the special school.

79. It is not my remit to determine how a council spends its capital resources but I do have a remit to consider the wider issues of school closure as set out in the school guidance. I am not persuaded that the council has taken sufficient account of the wider issues mentioned above.

80. The council's comment at my meeting on 30 January 2014 that "*the school would not have been considered for closure if the funding had not been reviewed*" is an important one. Whilst it is entirely within the council's remit to make capital funding decisions, in this particular case, the council asserts that finance has not driven the closure proposal. The council gave three options within its consultation paper. The second option was that "*the school continues and further reviews take place in the future of its on-going viability in the light of demand and popularity*". I have found no evidence that these options were discussed with the school or given serious discussion in committee and the move from the funded programme to a school closure proposal appeared as a *fait accompli* for the school. The council has not put a value on the community sports facility and nursery in its proposals but simply asserted that a way will be found to enable these to continue. Similarly, there has been no evidence that the loss of the co-location with the special school has been taken into account in the overall decision making.

81. After my meeting, the council wrote to remind me that it has now committed to give £4m to increase the capacity of the two neighbouring schools and that I should take this into account. I have not done this because this determination is about the statutory proposal that was made and its subsequent appeal and does not extend to any decisions that the council may have made subsequently.

82. Having considered the council's proposal to discontinue, and close, the Deanes School; the reasons for its decision; the objections to the proposal and

the school's appeal against the council's decision, taking into account the relevant legislation and guidance, it is my conclusion that the school should not be closed.

Determination

83. Under the powers conferred on me by the Education and Inspections Act 2006 and the Regulations made thereunder, I hereby uphold the appeal against the decision to discontinue the Deanes School.

Dated: 25 February 2014

Signed:

Schools Adjudicator: David Lennard Jones