

DETERMINATION

Case reference: STP/000553

Local Authority: The Royal Borough of Kingston upon Thames

Competition: To establish a new primary school

Commissioner: The Royal Borough of Kingston upon Thames

Proposers: Lilac Sky Schools
Surbiton Education Health Trust

Date: 11 September 2011

Determination:

Under the powers conferred on me by schedule 2 to the Education and Inspections Act 2006, I hereby determine that the proposed new primary school in Surbiton shall be established by the Surbiton Education Health Trust from 1 September 2012, with three places in the specialist resource provision being allocated to each year group except the nursery.

Referral

1. On 6th June 2011, the Royal Borough of Kingston upon Thames (“the Council”) referred to the Office of the Schools Adjudicator a specification for the establishment of a new primary school (“the School”), together with details of two proposals from organisations competing to implement the specification. Since the Council is a partner in the one of the organisations submitting a proposal, it has referred the matter to the Adjudicator as required under 10(1)(a)(ii) of Schedule 2 to the Education and Inspections Act 2006 (“the Act”).

Jurisdiction

2. In a notice dated 14th January 2011, the Council, acting as the commissioner, announced its intention to seek proposals to establish the School. The notice was in the form required by Section 7(5) of the Act. The commissioner received two proposals, one from Lilac Sky Schools (“LSS”) and the other from the Surbiton Education Health Trust (“SEHT”). On 3rd June 2011, the Council published a second statutory notice and a summary of the proposals, inviting representations on the proposals. It organised a public meeting to allow presentations of the proposals and an opportunity for interested parties to ask questions of the proposers and to express their views, as required by The School Organisation (Establishment

and Discontinuance of Schools) (England) Regulations 2007 (“the Regulations”). This meeting was held on 14th June 2011.

3. The Council formally referred the matter, including all associated documents and representations, to the Office of the Schools Adjudicator at the end of the consultation period, as is required when a local authority cannot decide the competition because of its own involvement in one of the proposals.

Context

4. The Council has identified a growing need for primary school places in the Borough, including the area of Surbiton. As part of its response to this demand, the Council has decided to establish an additional primary school principally to serve the Surbiton area. The Council has determined that the proposed school should open in September 2012 with an admission number of 60, and has given an assurance that it will find the capital cost of the School.

5. The Council invited proposals under section 7 of the Act, and the Regulations drawn up under it, and two proposals for the new school were received. This determination is based on an assessment of those proposals.

The Specification

6. In the notice of 14th January 2011, the Council, as the commissioner, published outline information about its specification for the School, together with details as to how fuller information could be obtained for the purpose of making a proposal within the competition framework.

7. The specification documents contained most of the information that bidders might require.

8. In an email of 10th August 2011, sent to me and to the two organisations that have submitted proposals, the Council submitted three amendments to its specification. Since the three amendments clarified matters that had been the source of prior confusion, I have decided to accept them, having sought and received confirmation that the two proposers have also understood and accepted them. The three amendments are:

- a. to remove the three places in the Specialist Resourced Provision (“SRP”) allocated to the nursery, so that the total provision in the SRP will be for 21, instead of 24, children;
- b. to make the three SRP places per year group additional to the 60 places that constitute the published admission number (“PAN”), rather than included in it (as was implied in the original specification), on the grounds that admissions to the SRP will be decided by a special educational needs (“SEN”) panel and the places provided by a service level agreement with the Council; and

- c. that the number of part-time places in the nursery should be 26, expanding to 52 in response to demand.

The Proposals

9. The commissioner received proposals that contained most or all of the relevant information as specified in the Regulations from:
 - a. Lilac Sky Schools; and
 - b. The Surbiton Education Health Trust, comprising the Royal Borough of Kingston upon Thames, NHS Kingston, South West London Health Partnerships and Your Health Care.

10. Since the LSS proposal was for an academy to be established, I ascertained from the Department for Education that the Secretary of State was willing, in principle, to enter into a Funding Agreement with LSS.

Procedures

11. In considering the proposals, I took account of the requirements of the Act and Regulations drawn up under it, as well as the statutory guidance for decision makers issued by the Department for Education and updated on 26th January 2010.

12. Following the representation period, I visited the site for the School on 5th August 2011 to note its environs, and held separate meetings with representatives of the Council as commissioner, and with representatives of each of the two bidders in order to clarify and explore aspects of their proposals.

Consideration

The School as commissioned by the Council

13. At my meeting with representatives of the Council, I sought clarification of a number of factors. I was reassured that the number of places to be provided by the proposed school were needed for the Surbiton area, and indeed I recognised a need for yet more places, which would have to be provided elsewhere, since the site for the School would be insufficient for a school larger than that proposed.

14. I clarified that, despite a statement included in the Council's specification that implied differently, the nursery class was intended to provide 26 full-time equivalent places from the outset. However, in its subsequent amendments to its original specification, the Council clarified that 26 part-time places would be provided initially, expanding to 52 in response to demand.

15. I further clarified that it was not the Council's intention that the two new and additional Year R class groups that will begin at other schools in September 2011 will necessarily be expected to transfer *en bloc* to the School

as its Year 3 in 2014; but rather, that admissions to Year 3 in the School in 2014 will be decided on the basis of the oversubscription criteria (and mainly on the basis of proximity).

16. There being no detail in the specification as to the nature of the special educational needs that would be met by the proposed SRP in the School, I sought clarification and received an explanation that the SRP was intended to complement the provision by a particular, but more distant, special school in meeting the needs of children with statements indicating emotional and social needs.

17. It became clear to me that the design of the School and planning relating to landscaping, waste, maintenance and energy were well advanced and beyond the possibility of much involvement by the successful proposal. However, contractual responsibilities for some of these matters will be transferred to the School when it is established. The School will also need to be involved actively in the preparation of a travel plan.

18. I enquired as to the ethnic mix there is likely to be among the pupils of the School. The Council's representatives believed that around 25-30% of the School population was likely to be of Black and Minority Ethnic nature, including some Polish and Eastern European pupils, with need for some support for English as an Additional Language. The area of the School enjoys more affluence than some parts of the Borough of Kingston.

19. Whichever bidder is successful, the Council is keen to retain the network of relationships that exists between its existing schools and itself, particularly in terms of the School Improvement Joint Trust that is being planned for the Borough of Kingston.

The proposals

20. I have concluded that both sets of proposals meet the commissioner's requirements and that both organisations are likely to be capable of implementing their proposals effectively. I have therefore proceeded to consider and compare the detail of the content of the proposals, as set out in writing by the proposers and as presented to me in the meetings that I held. SEHT's proposal follows the format and uses the subtitles provided by the Regulations, and has therefore been easier to assess than LSS's, which is more discursive, but I have been able to draw comparisons of most aspects of the proposals.

21. *Vision and general principles*

a. LSS

LSS is proposing an academy. LSS's philosophy is based on the principle of 'flooding the community with positivity' and a series of other positive principles that would undergird the life of the School. LSS has experience of school improvement on a basis of consultancy and

management which it would bring to bear, and would provide executive support in the leadership of the school during the initial years. In response to my enquiry as to LSS's business aspirations for the School, I was informed that LSS was motivated mainly by an intention to contribute positively to the provision of good education, was not seeking a way to take a financial margin from the actual provision of the School, but might in due course benefit from consultancy contracts with the School.

b. SEHT

SEHT is proposing a trust school, with membership of the trust being The Royal Borough of Kingston, NHS Kingston, South West London Health Partnerships and Your Health Care. SEHT views health and education as being integral to each other, with no artificial ceilings acceptable for children's individual learning. It believes that partnership is the key to this, with scope on the new campus for collaboration between the School and the proposed medical centre, each organisation being able the better to fulfil its purposes with the support of the other. Some trust partners, SEHT believes, will be in a position to introduce other useful organisations to the School.

22. *Diversity*

Both proposals would provide an extra degree of diversity, by way of either an academy or a trust school, none of which exist in the immediate neighbourhood, with the additional elements of an exterior, independent provider in the case of the academy and health service involvement in the case of the trust school.

23. *Curriculum*

a. LSS

LSS does not in its proposal specifically mention the freedom an academy would have to depart from the National Curriculum. The proposal does, however, state that it would meet the requirements of section 78 of the Education and Inspections Act 2002 (which state that the curriculum would be balanced and broadly based, would promote spiritual, moral, cultural, mental and physical development, and would prepare pupils for future opportunities and responsibilities). The proposal also mentions literacy, numeracy, IT, knowledge and understanding of the world, creativity in art, sport and music, and fostering imagination, investigation and independence. Religious education and collective worship are not mentioned.

b. SEHT

The SEHT proposal refers to a broad and balanced curriculum, support for healthy lives, personalised learning, a strong involvement of ICT,

teaching about a variety of religious faiths, health and safety, the use of natural resources, personal and emotional skills. At the meeting I held, SEHT added that it would expect the proposed school to conform to the Kingston pattern of all primary schools teaching a modern foreign language, at least to children from the age of 7, and of recognising the contribution that community languages can make to other learning. Collective worship is not mentioned.

24. *Effect on standards and contribution to school improvement*

a. LSS

LSS has a good record of school improvement, based on the set of attractive principles that it promulgates, which it has described at some length. It has put forward detailed schemes for the leadership and monitoring of teaching and learning, of achievement and of pastoral care. LSS has not provided a response to the Every Child Matters principles. It has described positively but generally the contribution it would intend to make to community cohesion. At the meeting I held, LSS expressed enthusiasm at the prospect of teaching French or Spanish in the proposed school, and at the likelihood of ethnic languages becoming part of the special Friday programmes that the school would offer.

b. SEHT

SEHT has drawn attention to the inclusion of the local authority in the proposed trust, with its success as 'one of only ten outstanding Children's services in the country', and with its record in assisting its schools in achieving the present high standards of achievement. It has set out clearly its commitment to a flexible curriculum and a strategy to manage the transitions from one key stage to another. It has described ways in which the health partners within the proposed trust would contribute to the Every Child Matters principles, and it has described its intended response to the needs of a multi-ethnic community.

25. *Extended school*

a. LSS

LSS's response to the need for extended school facilities is brief and general, with some dependency on its 'three business partners', which operate in the fields of media, IT and communications. No mention is made of the co-located medical centre.

b. SEHT

SEHT's response is fuller, focussed on the co-location of a medical centre with the opportunities that that presents, including practical outworking in health as well as in other ways.

26. *Early year's provision*

a. LSS

LSS refers briefly to the proposed nursery, accepting the Council's specification of 26 full-time equivalent places. Subsequently, in response to the Council's amendment to its original specification, such that 26 part-time places would be provided initially, expanding to 52 part-time places in response to demand, LSS indicated that it would be happy to work to the revised specification.

b. SEHT

SEHT provides a description of early years' provision in terms of the nursery class and reception classes, and in terms of the early years learning goals. However, perhaps based on the confusion in the specification about the number of places in the nursery, SEHT proposed 26 part-time morning nursery places, with 'wrap-around' care in the afternoons, and the possibility of an addition of 26 afternoon places (presumably in place of the wrap-around care) if future demand justifies it. I drew the discrepancy to SEHT's attention, and it has confirmed its intention, but added that afternoon provision could start in 2013 if local demand justified this additional provision. The Council's subsequent amendment to its original specification supports this position.

27. *Community cohesion*

a. LSS

LSS has described the experience of its personnel in multi-ethnic schools, its commitment to eliminating discrimination, and its intention to work with different faith communities and to engage in religious and cultural activities. Similarly, it has described its intention to combat social exclusion with one-to-one attention for all children. In an email following the meeting as, it has described its aims as good planning, differentiation, pastoral support and personalised learning, together with understanding of local communities.

b. SEHT

SEHT has described its aims for understanding the different facets of the local community, by evaluating the effect of policies, fostering interaction between different groups, and ensuring that the curriculum and extended school promote mutual understanding and awareness of human rights. SEHT would remain mindful of the local community's attachment to health provision on the site, and would work closely with parents and neighbouring schools.

28. *Special educational needs*

There having been no detail of the precise purpose of the SRP in the specification, I was able to outline to both proposers at the meetings I held with them the understanding I had gained in my meeting with representatives of the Council.

a. LSS

LSS offers a brief and general statement about the SRP in its written proposal. At the meeting I held, LSS referred to the experience it currently has in leading a special school for children with educational and behavioural difficulties, and to the value the Pastoral Support Panel that it envisages would bring to the children in the SRP. LSS followed this up with an email outlining the specialist staff it would intend to enlist to support personalised learning, integrated into mainstream classes when appropriate,

b. SEHT

SEHT describes in its written proposal the Council's SEN strategy, which it intends to support. SEHT told me in the meeting I held that it had assumed that the SRP was to be for children with emotional and social needs, that it believed local provision is be most effective, and that the proximity of the medical centre would contribute to promoting mental and physical health. In its written proposal, SEHT did abide by the Council's original specification of 24 children in the SRP, which would include the nursery. However, SEHT clarified at the meeting, and has since confirmed in writing, that it does not believe that SRP places are necessary in the nursery. This is because, SEHT says, few statemented children are likely to need such places, since most children identified at a very early stage in life progress into mainstream education, with most children for whom the SRP would be appropriate transferring in Key Stage 1. SEHT therefore proposed a variation to the specification in this respect, such that three SRP places would be available for each of the other year groups in the School, but not for the nursery. This, it has explained, would not be intended to deter applications for places in the nursery for children with special educational needs, who would be appropriately supported there. SEHT's position has, subsequently, become the position of the Council in its proposed amendments to the original specification. It became clear at the meeting that SEHT had been working on an assumption that the three places per year group were additional to the 60 main places specified for each year group. Although since then it has accepted in writing that the figure of 60 includes children admitted to the SRP, in fact the Council has subsequently amended its original specification to indicate that admissions to the SRP would be additional to the 60 in each year group, for the reasons given above.

29. *Senior leadership and management*

a. LSS

In its proposal, LSS says that it 'will bring a team to Kingston to run Sky Primary Academy for the first three years', one of whom would be Executive Headteacher, and that 'Lilac Sky Achievement Consultants will contribute a further sixty days per year'. Elsewhere in the proposal, Lilac Schools Trust's Director of Education is referred to as 'Executive Principal of Sky Academy', to whom the 'Principal of the School would report'; 'The Lilac Sky Executive Team would meet each week made up of the Executive Principal, The Principal, and Principal Senior Leader'. In a later sheet of additional information, much of this is reiterated, as LSS explains that it would appoint a headteacher 'to run the school', who would 'work alongside our team and would be overseen by . . . , Director of Education for Lilac Schools Trust and . . . , our consultant Executive Head. . . . After three years . . . we would expect to appoint a long term Leadership Team for the school'.

b. SEHT

SEHT does not describe explicitly the senior staff structure that it envisages, and this information is not required by the Regulations. I am assuming, therefore, that a typical primary school senior leadership team is envisaged. SEHT has said that it would intend that a headteacher be appointed for January 2012.

30. *Admission arrangements*

Both proposers would follow the Council's arrangements for community primary schools, which, in the outline form in which they have been presented, comply with the requirements of the School Admissions Code.

31. *Travel*

a. LSS

LSS has restated the information in the Council's specification, and is committed to formulating and monitoring a travel plan as outlined in the specification.

b. SEHT

SEHT, with the benefit of local knowledge, has amplified on the specification, with more detail of the desired maximum percentage of pupils who will travel by car, of the arrangements for children in the SRP and of alternative forms of transport.

32. *School categories*

a. LSS

As noted above, the Secretary of State has indicated a willingness in principle to enter into a funding agreement with LSS for the establishment of an academy.

b. SEHT

SEHT has proposed the establishment of a trust school. I have therefore considered the proposal in terms of the requirements of section 23A of the School Standards and Framework Act 1998. I have in particular noted the requirements of paragraphs (7) and (8) of this section relating to local authority's representation on trusts. In response to my enquiries, SEHT have informed me that, although SEHT includes four partners, it will ensure that not more than 20% of voting rights are accorded to the Council (probably on a basis of 2 out of 10 voting members).

33. *Views of interested parties*

I have been sent an account of the public meeting held on 14th June 2011 to review the two proposals. I cannot detect from that account any clear, collective view in favour of either proposal in preference to the other. I have also been sent copies of the written responses sent to the Council after the public meeting in response to the public notice of 3rd June 2011, and have analysed these responses. Some of the 15 responses were from people in more than one category. Thus the result is that 8 were from parents, 5 from local residents, 4 from staff at other schools, and 3 from governors and a clerk to governors. 1 of the 15 of the responses favoured the LSS proposal, and 14 the SEHT proposal. The one response favouring the LSS proposal expressed approval of LSS's philosophy and methods, and queried why SEHT's proposal included health service involvement. Among the reasons given in the responses favouring the SEHT proposal were a frequent perception of the Council having a better understanding of local conditions and a perception of it as having a strong educational record.

Conclusion

34. I have not detected any ways in which an academy or a trust school might, in itself, particularly benefit the provision of good primary education in comparison with the other, and so have not taken categories of school into account in reaching a decision between the two proposals. I shall not deal in the following paragraphs with issues where I do not find much that divides the quality of the two proposals.

Lilac Sky Schools

35. It has been difficult on occasion to muster the relevant information in the LSS proposal, which has not followed the headings provided in the Regulations, and has often been presented in a very discursive manner. Nevertheless, I have been able to find the salient features that I have sought.

36. LSS has demonstrated a keen attachment to the provision of good education, with a set of admirable principles undergirding its work. Although it has experience of running just one school, a special school in Somerset, it has considerable experience of school support. I do detect, however, that LSS's experience is mostly in the field of supporting schools in difficulties, and it may be that the model of leadership and management that has been proposed for the School is over-influenced by that experience. I note also that much, though not all, of LSS personnel's experience has been with secondary schools. In Surbiton, a new school is to be established where there will be an expectation of success from the outset, given the nature of the neighbourhood and the record of other schools in the Borough. While the aims for school improvement that LSS has advanced are wholly laudable, I am concerned that, for a modest-sized primary school, they might prove overbearing for staff, and costly in terms of time and finance.

37. There is some confusion, at least in terminology, in LSS's presentation about its intentions for senior leadership and management in the School. Nevertheless, even with that being discounted, I believe that the systems of management and accountability that are proposed for the first three years would seem intimidating, rather than supportive, for prospective headteachers. This is not to oppose the concept of executive headteachers, which can be beneficial in particular circumstances. However, the new School might well benefit from leadership from a headteacher who is not new to headship, and I believe that such candidates would be wary of accountability both to an executive headteacher and to a hands-on director of education. The effect could be stifling, rather than liberating, and could imply failure that needs remedying, rather than the success that is presupposed at a new school.

38. I am concerned that LSS has not given more attention that it has to the early years, which are formative not only for children's primary school career, but for the whole of their lives. In view of the freedom to depart from the National Curriculum extended to academies, it would have been helpful if more precision could have been offered about the curriculum intended for the proposed school. It is disappointing, too, that more detail is not provided of LSS's aspirations for extended school provision, particular in terms of the co-located medical centre, of which no mention is made. However, in terms of the SRP, LSS has helpfully dwelt on its current work in a special school that may provide for needs that are similar to those likely to be encountered in the School's SRP.

39. Although LSS has not had the advantage of the kind of dialogue with the commissioner that may have led to the revisions to the specification (which I am accepting), it has not indicated that would have any difficulty in working to the revised specification, and would do so.

Surbiton Education Health Trust

40. SEHT clearly has a strong track record of supporting schools and leading them to high levels of pupil achievement. It is rightly concerned that schools in the Borough should continue to collaborate with the Council and with each other. Its proposal of a trust school, with health partners prominent in the trust, is both sensitive to the community attachment to health provision on the site for a long period and constructive in proposing mutually beneficial collaboration for the benefit of primary education and the wellbeing of the community.

41. SEHT does not dwell either on the leadership and management structure for the School or on its own support for the School. This is understandable, with assumptions being made of a 'normal' primary school that could opt for whatever levels of professional support it needed. SEHT envisages a headteacher being in post early enough to commission the new School and engage staff for its opening.

42. It may reasonably be assumed that SEHT would intend its proposed school to follow the National Curriculum with religious education, as is required by law. Nevertheless, the proposed particular developments in the direction of health and other issues are welcome, particularly in view of the partnership with health organisations and the proximity of the proposed medical centre.

43. SEHT recognises the importance of early years' provision, which would straddle the nursery and reception classes. SEHT's clarification of its intention with regard to nursery places, and its commitment to provide morning places initially, with expansion with afternoon sessions if demand arises, complies with the Council's revision to its original specification. It would, however, be important that SEHT respond immediately to demand for afternoon places, in view of the implication of the public notice to establish the School.

44. SEHT's proposed variation to the Council's specification, such that there would be 21, rather than 24 SRP places in the school, with no SRP places allocated to the nursery, complies with the Council's revision to its original specification.

45. Having enquired about SEHT's intention to conform to the legal requirements as the Council's representation and voting on the proposed trust, I am able to accept that there would be compliance.

General

46. It is a matter of regret that the Council did not draft its specification to take into account the factors that have now caused them to propose amendments to that specification. It is equally a matter of regret that it was necessary for me to investigate matters of confusion between the specification and one of the proposals before the amendments were proposed. However, before accepting the amendments, I have become satisfied that they have not caused difficulty to either LSS or SEHT.

47. I have noted the high proportion of the responses to the public notice that supported the SEHT proposal, and agree with the general perceptions noted above. In addition, it is for all the reasons given within this adjudication that I am determining that SEHT should provide the School, with the proposed variation to the specification with regard to places in the SRP.

Determination:

48. Under the powers conferred on me by schedule 2 to the Education and Inspections Act 2006, I hereby determine that the proposed new primary school in Surbiton shall be established by the Surbiton Education Health Trust from 1 September 2012, with three places in the specialist resource provision being allocated to each year group except the nursery.

Dated: 11th September 2011

Signed:

Schools
Adjudicator: Canon Richard Lindley