

BSF JR Consultation: Sandwell

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To: PS/HILL
PS/HILL DIARY

From: [REDACTED]
Central Capital Unit
4th Floor

Event: BSF JR Consultation:
Sandwell

Tel: [REDACTED]

Subject: BSF Judicial Review in
Sandwell

Cc: Sarah Healey,
Jane Cunliffe, CCU

Time/Date: 3-3.40 pm
Monday 27 June

Location: Perm Sec boardroom

[REDACTED]
Mike Coleman, PfS
[REDACTED]

Attendees: **Officials**
Sarah Healey, Director, EFG
Jane Cunliffe, CCU

[REDACTED]
Mike Coleman, PfS
[REDACTED]

From Sandwell

Cllr Cooper The Leader
Cllr Eling, Deputy Leader
Cllr Badham, Cabinet
Member for Children and
Families
Jan Britton Interim Chief
Executive Barbara Peacock
Corporate Director People
Paul Piddick, BSF
Programme Director.

Notetaker We have a stenographer for
the meeting (the meeting will
also be recorded)

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B OBJECTIVES/PURPOSE OF THE MEETING/VISIT

Following the outcome in the Judicial Review the Department launched the BSF Consultation on the 2 March with the six local authorities involved in the claim (a copy of all the correspondence sent to Sandwell on the consultation can be found at **annex A – Sandwell** have not sent in any correspondence)

The consultation process has three distinct phases: 1. information gathering, 2. minded to decision and 3. final decision. As part of the first phase local authorities were asked to provide 'any and all information' they deem relevant for the Secretary of State to have in his mind when taking the decision. Local authorities returned their submissions to the Department by the deadline of the 11 April. Department officials and colleagues at PfS have been reviewing the information provided in each case.

This meeting forms the second part of the information gathering phase. Its purpose is to advance our understanding of the local authority's consultation submission. To that end, we have provided a list of questions (see **annex B**) we would like them to address either before or during the meeting. The local authorities have also been asked to give a presentation on their claim and they may use this opportunity to highlight particular aspects of their submission.

To be clear: no decision has been reached on Sandwell's schools (nor the schools in the other claimant authorities) and no decision will be formulated or communicated at the meeting.

C AGENDA

Full meeting agenda provided, although Lord Hill leaves at 11.10

Meeting chair: Sarah Healey, Director, Education Funding Group

15.00 Welcome and introductions Sarah Healey

Brief welcome thanking Sandwell for attending the meeting, a quick mention of the stenographer - who is here to ensure an accurate record of events. (Sandwell have been informed)

Then round the table for a brief introduction of attendees (name and where they work).

Hand over to Lord Hill – Minister for this policy area. Flag that Lord Hill can only be with us until 15.40

15.02 Lord Hill opening words (see section D for script)

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15.03 Sarah thanks Lord Hill and then asks Sandwell to start their presentation. *[Note: we have not been informed who is presenting from Sandwell]*

15.03 Presentation from Sandwell

30-40 minutes for the presentation

15.43 Sarah thanks the presenter(s) and Lord Hill leaves

15.44 Sarah opens the discussion

The discussion can focus on the presentation and/or the questions the Department has raised (allow about 30 minutes)

17.21 Next steps in the consultation

Sarah draws the discussion to a close and briefly outlines the next steps in the process (**annex C**)

17.36 *Sarah asks if there are any questions*

We have allowed 20 minutes for further from Sandwell questions. (Outline question and answer at **section E**)

17.55 *Sarah to thank everyone for coming*

Meeting close

D OPENING ADDRESS

Thank you for agreeing to meet us today.

This meeting is an important step in the consultation process, and provides a real opportunity for us to gain a better understanding of the schools in your claim.

This is the last meeting with local authorities involved in the consultation and we expect to have concluded all the meetings by the end of June. We are not going to come to a decision straight away on Sandwell's schools. We have not yet reached a decision on any of the schools in the claim and will not do so until after we have held meetings with all the relevant authorities.

We will be taking all factors into account when reaching a decision on the schools in this consultation and one of those factors is the state of the public finances. The Department's capital settlement will have reduced by 60% by the end of this spending period, which is an extremely tight settlement but is set in the context of the Government's wider strategy for reducing the overall national budget deficit.

We are taking steps to ensure that future education capital expenditure delivers greater value for money. The Secretary of State has now taken delivery of Sebastian James's independent review of DfE capital expenditure, which proposes a new approach to the allocation and use of capital funding and will respond shortly.

With reduced resources available, we must prioritise that funding carefully. This is why allocations for 2011/12 were focussed on maintenance and basic need, as these are core needs of capital expenditure.

I look forward to hearing more about the schools in your claim.

E FACTS/ LINES TO TAKE

How long do you expect the whole consultation process to last and when will you reach a decision?

We are in the information gathering phase and we have scheduled meeting with all six local authorities in the claim, these meetings are set to conclude by the end of June.

Officials will then be providing advice to the Secretary of State on each of the individual schools in the claim.

At the next stage a letter detailing the provisional or 'minded to' decision will be sent to the local authorities and you will be given the opportunity to make further representations on that minded to decision.

After that, the Secretary of State will make a decision on each of the projects having considered with an open mind and with due regard to equalities duties, and local authorities will be notified.

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If pushed: We want to ensure that, in line with the Judge's direction, we fully consider all the submissions made and need to allow time to do this. The court order did not prescribe a deadline, but we understand the need to provide certainty to the schools involved in this process.

The Secretary of State is not here, does that mean Lord Hill is taking the decision?

No, the Secretary of State will take the decision in line with the Judgment's directions.

What does the Secretary of State know about our claim?

The Secretary of State has been kept informed as to the progress of the consultation and has been involved with the design and procedure of the consultation. In line with the process outlined in his WMS these meetings are

part of the information gathering phase and as such no decision has been reached and no recommendation from officials has been formulated.

Will you genuinely look at our case with an open mind? Where will you find £1 billion to pay for these schools?

The Secretary of State has outlined the consultation process and he will consider all information provided before coming to a fresh decision. He will do this with an open mind, paying due regard to equality duties.

The Secretary of State will take all relevant considerations into account when reconsidering his decision.

Does the Secretary of State still stand by his decision to end BSF?

Yes. The Secretary of State won on the substantive points in the case (irrationality and substantive legitimate expectation). The Secretary of State is happy to comply with the Judge's conclusion that he should reconsider his decision on the claimants' schools in light of further representations; and with due regard to his equalities duties.

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F BACKGROUND INFORMATION

The Building Schools for the Future Judicial Review was brought by Luton, Nottingham City, Sandwell, Kent, Newham and Sandwell. The Judgment was handed down on 11 February 2011 in the Royal Courts of Justice. The Judge found for the Secretary of State on the main grounds of the case. The items on which the Judge found for the claimants related to procedure, not the substance of the decision to cancel BSF.

- Mr Justice Holman did not question the decision to end the BSF programme – all the claimants “accept the political decision that cuts and savings had to be made”
- He agreed that the Secretary of State behaved rationally and that his decision was “not open to legal challenge on that basis”
- The Judge found that the councils had no expectation of receiving funding – he said that “there was no promise or expectation” that any of the claimants’ projects would definitely proceed.”
- The Judge has not ordered a reinstatement of funding for any project nor has he ordered any compensation to be paid.

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Secretary of State for Education is happy to comply with the Judge’s conclusion that he should reconsider his decision on the claimants’ schools in light of further representations; and with due regard to his equalities duties.

The following 9 schools are in Sandwell’s claim:

Sandwell wave 5

- Bristnall Hall
- Heathfield (*sponsored academy*)
- Manor (Phoenix Collegiate)
- Meadows
- Menzies (Phoenix Collegiate)
- New KS4 and Therapeutic Units
- Perryfields

- Stuart Bathurst RC
- Wood Green (*converter academy*)

New Key Stage 3 Pupil Referral Unit

The Secretary of State's announcement on 6th August 2010 included the Ormiston Sandwell Community Academy as being *for discussion*. The extract from the 6th August list also included a new KS3 PRU which was due to be co-located on the site (shown below).

Ormiston Sandwell Community Academy (incl. New KS3 PRU)	Academy – capital allocation for notification after spending review
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The new KS3 PRU was not included in the work to allocate capital to the Academy project. It is clear that the PRU was included on the list in error and was as a result never considered by the Academies team as part of the review into Ormiston.

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The PRU was not included in Sandwell's case for Judicial Review as it was as far as they were concerned still 'under review'.

Following the commencement of the consultation (March 2011) Sandwell contacted DfE to enquire about the PRU review. We agreed that Sandwell should submit information on that new PRU as part of the Sandwell consultation; they did so and PfS also site visited the PRU. As the PRU was listed as for review, Academy considered the information in the first instance.

Officials have concluded that the PRU cannot be considered outside of the rest of the Sandwell schools in the claim and have informed Sandwell of that.

Extract from 22 June letter

DfE officials have considered the information provided on the Key Stage 3 PRU, which was due to be colocated with Ormiston Academy. We have reached the view that the PRU cannot be considered in isolation to the other

cancelled Sandwell schemes. Therefore, we decided to add this PRU to the consultation.

Sandwell have responded positively to this.

Key aspects of Sandwell's case

Sandwell have structured their submission on:

- Building condition (old, poorly maintained buildings, CLASP buildings)
Phoenix Menzies is cited as their worst condition school. Number of temporary classrooms currently in use (Perryfields has 16 temporary classrooms onsite). Sandwell have included information on the cost of repairing the schools.

Phoenix Menzies - £3.5m

Phoenix Manor - £3.7m

Bristnall Hall - £1.1m

Stuart Bathurst - £2.1m

Wood Green - £2.4m

Heathfield Technology College - £0.42m

The Meadows – generally good condition, just redecoration

KS4 PRU - £0.2m

Therapeutic Unit – recently refurbished

- The two BSF waves (w2 and w5) Sandwell view as one wave of continual investment, waves were an 'artificial' construct dedicated by PfS. This is further explored by their school re-organisation plans
- Wider benefits of the new schools to Sandwell as a whole
- ICT benefits
- Costs to Sandwell (decant costs £1.3m and local authority costs £1.4m)
- Contractual liabilities (£2.4m)
- Suitability and equality issues
- Basic need (Sandwell has a severe basic need pressure at Primary. The increased numbers coming from Primary will have a significant

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impact on Secondary from 2017/18. BSF was to grow NOR at Perryfields (289 pupils), Bristnall Hall (240 pupils).

Sandwell were the only local authority to pursue the issue of their costs and contractual liability as a formal ground in their case.

Sandwell have prioritised their schools with Phoenix Menzies being their first priority due to condition.

General information on BSF in Sandwell

Sandwell were in their second wave of BSF, but had not reached OBC on their Wave 5 by the time of the cancellation in July 2010. Sandwell were incorrectly included (for both waves) as 'unaffected' in the list the accompanied the Secretary of State's announcement.

The list issue was a major factor in Sandwell bringing their case for Judicial Review. There was and remains significant media interest in the Sandwell list errors.

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A Sandwell delegation came to the Department on the 5 August to meet the Secretary of State.

Capital allocation for Sandwell in 2011/12

Sandwell has been allocated £10.8m in December 2010. This was for basic need £4.7m, maintenance £5m (inc LCVAP) and DFC £1m (inc VA schools).

G BIOGRAPHIES

Cllr Cooper, the Leader

Darren Cooper has been a Labour councillor with Sandwell Council since 1991, representing the Soho and Victoria ward in Smethwick. He was elected Leader of Sandwell Council in December 2009. As well as his work as Leader and Ward Member, he is a nurse, working for the National Health Service, caring for people with mental health problems.

Cllr Eling, Deputy Leader

Steve Eling, is Deputy Leader of Sandwell Council and cabinet member for strategic resources. He was elected Labour councillor to represent the Abbey ward in 2004.

Cllr Badham, Cabinet Member for Children and Families

Robert Badham, is Cabinet Member for Children and Families for Sandwell Council. He was elected Labour councillor to represent the Greets Green & Lyng ward in 2006.

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Jan Britton Interim Chief Executive

Jan Britton was appointed in September 2010 as Interim Chief Executive of Sandwell Council. Before joining the Council, he worked for Buckinghamshire County Council, Colchester District Council and the London Borough of Barking and Dagenham.

Barbara Peacock Corporate Director People

No biography is available.

Paul Piddick, BSF Programme Director.

No biography is available.

ANNEX A

Correspondence on the BSF JR consultation from DfE to Sandwell

ANNEX B

Questions and clarifications sent to Sandwell

To advance our understanding of your submission we have a number of queries as a result of reviewing your return. It would be useful if you could provide answers to the following questions either before or at the meeting.

1. The information provided in the condition summary is *"compiled from information gathered from recent site visits regarding condition"* with further details for each project included separately. Please could you explain the basis of your condition assessments, e.g. details of the methodology used?
2. In your submission you state *"We consider that the site surveys commissioned by the DfE to be undertaken by Partnerships for Schools (PfS) as part of this consultation process will demonstrate that in fact, had condition been the main consideration in prioritising our projects, then the following projects would have been prioritised for investment based on the information at that point in time"* and you put the first three in the order of Phoenix -Menzies, Bristnall Hall, Perryfields. You then go on to say *"At the point that the original prioritisation exercise was undertaken (SBC development 2006/07) an analysis of existing suitability surveys also revealed that the following Wave 5 projects had "medium to low" suitability: Heathfield, Stuart Bathurst and Wood Green. Again, had Sandwell not been working on the basis of one continuous programme then these projects may well have been prioritised more highly."* If all relevant factors were considered what would be Sandwell's priority order?
3. The pupil numbers you provide in your submission are higher than the figures from the PfS SCAP data. Could you please clarify whether this is due to the inclusion of the Academies in your pupil projections?

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4. In the submission you state *"A number of costs in respect of setting up the LEP and the initial projects are to be recovered over the lifetime of the entire programme. These costs total in excess of £3.2m. Currently the situation is being reviewed as to who is liable to cover these costs"*. Has this issue been resolved?
5. In the submission you state *"As Sandwell has always worked on the basis BSF would be one continuous programme of investment across the whole of its estate, it is difficult to identify exactly which costs are directly attributable to the development of Wave 5. Therefore, a ball park figure of 20% of the development costs expended to date has been used"*. Please can you explain why you have assumed 20% costs specifically?

6. Your submission includes a figure of £320k for Academies site investigation surveys. Is this included in the BSF development cost?
7. In your updates to the Wave 5 projects under review, you propose potential savings regarding Brades Lodge and Phoenix Collegiate and the 2 academy conversions. How much saving do you think these represent?

Next steps in the consultation process

Current position: The Department and PfS are considering the information provided by the local authorities. Officials have drafted assessment criteria from the information provided by the local authorities. The proposed criteria will be equality assessed before application.

Meetings: Dates have been agreed with all six local authorities and we expect the meetings to have concluded by the end of June.

These meetings will allow the local authorities to discuss the information they have provided in more depth and allow them to make further representations on issues that they consider need particular attention. The purpose of the meetings will be to allow local authorities the opportunity to fully present their case. No decision will be made at the meetings.

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'Minded to' decision: A letter detailing the Secretary of State's provisional or 'minded to' decision will be sent to the local authorities and they will be given the opportunity to make further representations.

Decision: Following consideration of any further representation on the 'minded to' decision, the Secretary of State will make a decision on each of the projects; having considered, with an open mind, all of the information gathered over the consultation period and with due regard to his equalities duties. As the Judge made clear, [the Secretary of State] "may save all, some, a few or none". He concluded by saying that "no one should gain false hope from this decision".

There is no fixed timetable for the decision, but we are mindful of the need to provide certainty to schools involved.