



Office of
the Schools
Adjudicator

Determination – Statutory Proposals

Case reference: STP662

Proposer: The London Borough of Lambeth

Proposals: A proposal to close Fenstanton Primary School and Holy Trinity Church of England Primary School.

A proposal to amalgamate Holy Trinity Church of England Primary School with Fenstanton Primary School by the discontinuation of Fenstanton Primary School with Holy Trinity School remaining open and located on the site of Fenstanton Primary School.

Referred by: The Southwark Diocesan Board of Education

Date of decision: 17 July 2025

Determination

Under the power conferred on us by Paragraph 17 of Schedule 2 to the Education and Inspections Act 2006 and The School Organisation (Establishment and Discontinuance of Schools) Regulations 2013, we have considered two related proposals:

- i) The first is a proposal by Lambeth Council to close Fenstanton Primary School and Holy Trinity Church of England Primary School.
- ii) The second is a proposal by the governing bodies of Fenstanton Primary School and Holy Trinity Church of England Primary School to amalgamate the two schools by closing Fenstanton Primary School with Holy Trinity Church of England Primary School remaining open and located on the site of Fenstanton Primary School.

We hereby reject each of the proposals, which means that both schools remain open.

The proposals

1. On 9 September 2024, the London Borough of Lambeth (the Local Authority, Lambeth, the Council) published statutory notices in relation to a proposal to close Fenstanton Primary School (FPS) and Holy Trinity Church of England Primary School (HTPS) (Proposal 1). On 4 November 2024, this proposal was approved by the Council. However, it was said to be approved with modifications and subject to conditions.
2. Both schools are situated in the area of the London Borough of Lambeth. FPS is a community school and HTPS is a voluntary aided school with a Church of England religious character. The religious authority for HTPS is the Diocese of Southwark (the Diocese), which oversees the work of the Southwark Diocesan Board of Education (the SDBE).
3. On 16 May 2025¹ the Council rejected a proposal by the governing bodies of FPS and HTPS for the amalgamation of the two schools with effect from 1st September 2025 (Proposal 2). On 23 May 2025 solicitors representing the Diocese submitted a request to the Council for both proposals to be referred to the Schools Adjudicator.
4. On 12 May 2025 the Diocese published a proposal to amalgamate FPS and HTPS by closing both schools and opening a new primary school (Proposal 3). This proposal is yet to be determined.

Chronology of Relevant Dates and Events

5. I set out below a brief chronology of events as provided by solicitors representing the diocese:

9 September 2024 – 7 October 2024 – Local Authority issues statutory notice for the closure of HTPS and FPS (together with a number of other schools) triggering the formal 4 week representation period.

4 November 2024 – The Local Authority as decision maker approves the closure of both schools “with modifications, subject to certain conditions being met”. The modification and condition was stated to be that “a viable alternative proposal to amalgamate Fenstanton Primary School and Holy Trinity CofE Primary School is proposed within the agreed timeframe and criteria.”

31 January 2025 – A statutory notice was purported to be issued by the governing bodies of the two schools for the amalgamation of the two schools on 1st September

¹ There is a lack of clarity about this exact date. The decision has been published online with a stated publication date of 15 May 2025, but with a stated decision date of 23 May 2025. It was communicated to families in a letter dated 22 May 2025.

2025, triggering the formal 4 week representation period ending on 28th February 2025.

28 April 2025 – The two month decision period expires with no decision being made by the Authority.

12 May 2025 – The SDBE publishes a proposal under section 11 of the Education and Inspections Act 2006 to establish a new voluntary aided school formed of the amalgamation of HTPS and FPS. In support of this proposal, the SDBE makes reference to the previous informal and formal consultations regarding amalgamation and the Local Authority's own decision inviting proposals for amalgamation. The formal representation period for this proposal ended on 9 June 2025. The Local Authority is identified as the decision maker.

16 May 2025 – The Local Authority purports to make a decision to close both schools on 1st September 2026. Emails are sent to the Heads and Chairs of all the Lambeth schools but not to SDBE noting that a decision to close has been made by Councillor Kind.

22nd May 2025 – The Local Authority writes to the families of pupils at the two schools informing them of the intended closure of the schools.

6. The case manager wrote to the Council on our behalf on 26 June 2025 stating that we were accepting jurisdiction on the Diocese' referral of 23 May 2025. The Council was then asked five questions. We received the following response, which also sets out the questions:

"Does the Council agree that the chronology set out in your email is correct?

Does the local authority agree that it had no jurisdiction to make a decision on proposal 2, given that any purported decision by the authority post 28th April based on the January statutory notice was invalid as the time period for any decision had lapsed, with the consequence that the School's Adjudicator became the decision maker for that proposal?

If the local authority does not agree this point, please explain the legal basis upon which it is alleged that the authority had jurisdiction to make the decision of 16 May 2025. Proposal 3 remains to be determined.

Does the local authority agree that the proposal 3 is related to proposals 1 and 2?

If this is the case, does the local authority claim to have jurisdiction to determine proposal 3 and, if so, on what basis?

The Council does not agree with the chronology. Furthermore, the Council does not accept that any matter has been validly referred to the OSA. The Council's position

is that the following is a summary of the chronological position, explained in further detail below:-

9 September 2024 – as you say, this was the date of publication of the statutory proposals to close Holy Trinity CofE Primary School (“HTS”) and Fenstanton Primary School (“Fenstanton”) (together “the Schools”), and the start of the 4 week representation period.

4 November 2024 – this was the date on which the Council considered whether to approve those statutory proposals. The decision was taken [by] Lambeth Formal Cabinet and is explained below, but in short it was that the Schools would close unless they provided alternative workable proposals.

31 January 2025 – the Schools issued a purported statutory notice or notices (“the Schools’ Proposals”) which was/were unlawful and a nullity.

12 May 2025 – the Diocese purported to publish a proposal and which directly contradicted the Schools’ Proposals and actually or in effect in fact was predicated on the Schools’ Proposals being a nullity.

16 May 2025 – the matter was reported back to the Cabinet Member. As the Schools’ Proposals were unlawful, there was no new proposal to consider. The 4 November 2024 [decision] therefore took effect”.

7. We note that, although it is stated that the chronology is not agreed, the Council’s response confirms the dates presented by the solicitors representing the diocese as correct. From the information sent to us, we consider the following additional dates and events to be relevant.

14 May 2025 – the Council wrote to the Diocese claiming that Proposal 3 is unlawful and threatening to issue a pre-action protocol letter if the proposal was not withdrawn.

19 June – the Council wrote to the DfE Regional Director for London claiming that the letter had been copied to the OSA. It is said that the letter set out the Council’s position, which we will describe in more detail below. The Council’s claim is incorrect. The Chief Adjudicators (who view all incoming correspondence) did not have sight of the letter to the Regional Director until 2 July 2025 when the Council forwarded a copy to us in response to our request of 26 June 2025. This was a request for a copy of the decision of 16 May 2025 together with reasons for the decision and the Council’s representations in response to the referral which had been made on behalf of the Diocese. It was necessary for us to make this information request because the Council had failed to send us the prescribed information as they were required to do in response to the referral by the Diocese. We have not seen a copy of any response from the DfE Regional Director.

8. There is a lack of clarity about when the final decision was taken by the Council on Proposal 1 and the decision on proposal 2. The parties have each told us the relevant date was 16 May 2025. However, the decision has been published online with a stated

publication date of 15 May 2025, and a stated decision date of 23 May 2025. It was communicated to the families of children attending the schools in a letter dated 22 May 2025. This raises questions about decisions being published and notified prior to having been determined. However, we do not propose to comment further on this point since the procedural flaws in this case are so extensive that we have no option other than to reject both proposals 1 and 2 without needing to comment further on these additional irregularities. We will simply refer to the decision date as “the May decision date”.

Jurisdiction

9. Two proposals were referred to the Adjudicator on 23 May 2025. Proposal 1 was published under section 15 of the Education and Inspections Act 2006 (the EIA). Paragraph 8 of Schedule 2 to the Act makes the Council the relevant authority to determine the proposal in the first instance. Regulation 14 of The School Organisation (Establishment and Discontinuance of Schools) Regulations 2013 (the Regulations) requires the Council to determine the proposal within two months of the end of the representation period. The proposals purported to be determined conditionally and with modifications at a meeting of the Council’s Cabinet on 4 November 2024. The proposal was substantively determined in May.

10. Proposal 2 is a related proposal published by the governing bodies of FPS and HTPS under section 15 of the EIA to amalgamate the schools by closing FPS and continuing HTPS. This proposal was supported and appeared to be encouraged by the Council in the Report presented to the Cabinet meeting of 4 November 2024. The new amalgamated school was proposed to be located on the FPS site in Abbots Park. The Council is the decision maker on a school closure proposal, unless certain specified circumstances apply. Proposal 2 is not a proposal which would normally fall to be decided by the Adjudicator. However, the Council did not make a decision on Proposal 2 within two months of the end of the representation period (in other words by 28 April 2025) as required by regulation 14 of the Regulations. Where this happens, the Council is required to refer the case to the Schools Adjudicator within a week of the end of the two month period. The Schools Adjudicator then becomes the decision-maker on the proposal. The Council did not comply with the referral requirement but instead purported to make a decision to reject Proposal 2.

11. Paragraph 14(2)(d) of Schedule 2 to the EIA allows the Diocesan Board of Education for any diocese of the Church of England, any part of which is comprised in the area of the local authority, to request that a local authority refers to the adjudicator any decision taken by that local authority on a proposal made under section 15 of the Act together with any reasons given by the authority for their determination. Regulation 18 of the Regulations requires that such a referral is made within four weeks of the decision being made. The SDBE, on behalf of the diocese, requested the Council by email on 23 May 2025 to refer the proposals to the adjudicator. The request was made by an eligible body within the required timeframe.

12. Upon receipt of such a request, the local authority is required to refer its decision with reasons to the Schools Adjudicator. As stated above, this requirement was not complied with by the Council within the required timeframe. The Diocese has made a valid referral request; Proposal 1 is said to be a modified conditional proposal; the decision on Proposal 2 purports to uphold the decision taken on Proposal 1, therefore Proposal 1 was not determined substantively until 16 May 2025 alongside Proposal 2. We are therefore satisfied that we have jurisdiction to consider and determine both Proposal 1 and Proposal 2.

13. In addition to our jurisdiction arising from the Diocese's, referral, we have jurisdiction to consider both proposals because the Council did not determine Proposal 2 within the required two-month period. Consequently the Adjudicator became the decision-maker.

14. Paragraph 17(1) of Schedule 2 provides that, where any proposals are referred to the Adjudicator, he must consider them afresh.

Procedure

15. In considering this matter we have had regard to all relevant legislation and guidance, including statutory guidance for proposers and decision makers concerning the opening and closing of maintained schools. The most recent version of this guidance is dated October 2024².

16. The documents we have considered in reaching our decision include:

- a) the representations made on behalf of the Diocese the governing bodies of FPS and HTPS;
- b) the statutory notice dated 9 September 2024;
- c) the public pack of cabinet papers published by Lambeth Council for the meeting of its Cabinet on Monday 4 November 2024³ (the Cabinet pack);
- d) the minutes of the Cabinet meeting on 4 November 2024;
- e) the statutory notice issued on 31 January 2025;
- f) the statutory notice issued on 12 May 2025;
- g) various documents supplied by SDBE to accompany the referral;

² [Opening and closing maintained schools](#)

³ [moderngov.lambeth.gov.uk/documents/g16869/Public reports pack Monday 04-Nov-2024 17.00 Cabinet.pdf?T=10](https://moderngov.lambeth.gov.uk/documents/g16869/Public%20reports%20pack%20Monday%2004-Nov-2024%2017.00%20Cabinet.pdf?T=10)

- h) information available on the websites of the Local Authority, the schools and the Department for Education;
- i) details of the Council's decision taken in May 2025 ("the May 2025 decision") and the reasons for that decision;
- j) the documents provided by the Council; and
- k) the representations made by the Council .

Background

17. The Cabinet pack for the 4 November 2024 meeting sets out clearly and correctly that the decision makers had four options. These options were stated as:

- to reject the proposal;
- to approve the proposal without modification;
- to approve the proposal with such modifications as they think desirable; or
- to approve the proposal, with or without modification, subject to certain conditions being met

18. The Cabinet pack states the following recommendations were made to the decision makers by officers:

For FPS:

"Approve closure with modifications, subject to certain conditions being met.

Modification and Condition: A viable alternative proposal to amalgamate Fenstanton Primary School with Holy Trinity CofE Primary School is proposed within the agreed timeframe and criteria."

For HTTPS

"Approve closure with modifications, subject to certain conditions being met.

Modifications and Condition: A viable alternative proposal to amalgamate Fenstanton Primary School with Holy Trinity CofE Primary School is proposed within the agreed timeframe and criteria."

19. The reasons given for the recommendation for FPS were:

" [...]

- i. The recommendation is essentially to approve the proposal to close Fenstanton school, however Officers would like Members to consider an alternative proposal to amalgamate Fenstanton Primary School with Holy

Trinity CofE Primary School, which may have merits to consider. See appendices BB and CC.

- ii. Unfortunately, the Board of the Southwark Diocesan Board of Education Multi Academy Trust (SDBE MAT) informed the LA as part of the representation process that they are no longer able to enter a partnership agreement with Holy Trinity CofE primary to offer places to all children. The partnership was signposted and supported to maintain and strengthen educational provision in the Upper Tulse area. See appendix CC.
- iii. The SDBE MAT had initially committed to completely merging both schools, thereby accommodating all children at both schools into one new school.
- iv. This merger would have resulted in the strengthening of a school provision in the area and reducing the disruption of closure on children, families and staff. Which is the LA's preferred approach.
- v. Closure of both Fenstanton and Holy Trinity would see the displacement of a projected 344 children in the Upper Tulse Hill area.
- vi. The leaders of Fenstanton Primary School have jointly submitted an alternative proposal with the leaders of Holy Trinity CofE Primary School and the SDME to amalgamate both schools, by closing Fenstanton school and retaining Holy Trinity in order to retain the CofE status, with a possible preference to move to the Fenstanton site (although site preference is not stated clearly in the proposals).
- vii. Initial surveys to Fenstanton parents suggest a positive response to the alternative proposal.
- viii. The counter proposal suggested that: "The proposal put forward by Lambeth estimates the overall cost liability to the council for the closure of both schools is 2.7 million pounds. This figure is made up of combined forecast cumulative deficits of 1.5 million and overall redundancy costs 1.2 million. An amalgamation would reduce this amount considerably. Using the council's estimations of other proposed amalgamations, it can be anticipated that at least 70% of combined staff will be retained in the initial stages of the amalgamation. This would leave a cost liability to the council of approximately £360,000. Should the proposed amalgamation begin in September 2025, the cumulative deficits of both schools would be £676,337, which would result in an overall saving to the council of £1,663,663.

How will this proposal work:

- i. Cabinet would on November 4 make a decision to approve the decision to close Fenstanton school with modifications, subject to conditions being met.

- ii. The schools would become the new 'proposers' and would need to issue their own Statutory Notice to consult on the amalgamation, as part to the statutory guidance process. This would last 28 days.
- iii. This would be a new consultation process however and the LA should aim to make a decision quickly after the close of the new representation period.
- iv. Officers would recommend making a decision in March or April 2025 following the publication of admissions arrangements of all schools which must be published by law, by March 15. This way the LA will be able to gauge whether a consultation to reduce the additional 30 places required have been achieved and published. Do note publications can be appealed by members of the public up until May 15. Schools can consult to reduce PAN from 2026 from October First, 2024 to January 31, 2025. Consultation must last six weeks from consultation start.
- v. The LA would only be the decision-making body as per the guidance for closing/amalgamating LA maintained schools and would consider the merits and viability of the new proposal."

20. The reasons given for the recommendation for HTPS were:

" [...]

- i. "See narrative for Closure of Fenstanton
- ii. The ending of this partnership commitment now means children at Holy Trinity would have to be displaced across a number of local schools (as there is not sufficient room at Christ Church Streatham to accommodate them all). It would also reduce CofE choice for parents at the school as there are only two CofE schools within 2km with a total of 93 vacancies.
- iii. The recommendation is essentially to approve the proposal to close Holy Trinity CofE school. However, Officers would like Members to consider an alternative proposal which may have merits to consider.
- iv. Initial surveys to both set of parents suggest a positive response to the alternative proposal:"

21. The minutes of the meeting on 4 November 2024 record that the following decisions were taken:

- a) "To approve the Closure of Fenstanton Primary School with modifications, subject to certain conditions being met.
- b) To approve the Closure of Holy Trinity CofE Primary School with modifications, subject to certain conditions being met".

22. Following these decisions, the governing bodies of the two schools put proceeded with an amalgamation proposal (proposal 2).

23. The May 2025 decision is the response of Lambeth to proposal 2. It states:

“Purpose:

In November 2024 Cabinet, a decision was made to:

1. To approve the Closure of Fenstanton Primary School with modifications, subject to certain conditions being met. Recommendation: Approve closure with modifications, subject to certain conditions being met. Modification and Condition: A viable alternative proposal to amalgamate Fenstanton Primary School with Holy Trinity CofE Primary School is proposed within the agreed timeframe and criteria.
 2. To approve the Closure of Holy Trinity CofE Primary School with modifications, subject to certain conditions being met. Recommendation: Approve closure with modifications, subject to certain conditions being met. Modifications and Condition: A viable alternative proposal to amalgamate Fenstanton Primary School with Holy Trinity CofE Primary School is proposed within the agreed timeframe and criteria.
- The decision will be on the viability of the alternative proposal.

Decision:

1. To confirm the original decision to close Holy Trinity Primary School and Fenstanton Primary School in September 2026.”

24. The accompanying report says:

“The alternative proposals put forward by the governors of both schools, supported by the Southwark Diocesan Board of Education (SDBE), can be found in Appendices A and B to this report. In sum, the governors of Holy Trinity Primary School seek to continue the school (or possibly create a new school) but on the Fenstanton Primary School site, The governors of Fenstanton Primary School seek to close their school. The two schools refer to this as an “amalgamation”. Legal advice is that these two proposals are not possible to take forward because the governors of a community school (such as Fenstanton) is not permitted by the relevant legislation (the Education and Inspections Act 2006) to propose its own closure. Regardless of whether there may also be separate legal issues with the Holy Trinity proposal, neither proposal can be taken forward since the Holy Trinity proposal is linked to the unlawful Fenstanton proposal.

However, for completeness’ sake, and so that the underlying issues about educational provision are fully aired, the viability of the two proposals is assessed in this report by reference to the criteria set out in the Department for Education’s (DfE) Opening and Closing Maintained Schools guidance October 2024. This has been done to ensure due diligence and to give a full understanding of the plans which the

two governing bodies wished to take forward and whether they would have been appropriate even if they had been lawful. The criteria used are demand and need, suitability, proposed admission arrangements, school size, equal opportunity issues, travel, balance of denominational provision, integration and community cohesion, schools of concern, funding, and community services.

Following assessment of the governors' alternative proposal, this report does not recommend modifying the decision from the Cabinet decision taken in November 2024 and recommends the continuation/confirmation of the decision to close Fenstanton and Holy Trinity in September 2026. The governors' alternative proposals are not considered as viable due to their being outside the statutory framework for proposals that may be made, and, in any event, they would not satisfy the criteria in the Guidance (see next paragraph), and the proposed new school would not be a financially sustainable school.

As regards criteria in the DfE's Guidance, the proposal is considered unviable due to the issues of low parental preference and low pupil numbers, meaning that the proposed successor school would remain over 40% empty working on a best-case scenario that all children remain at Holy Trinity on the Fenstanton site. The financial model submitted (Appendix B) significantly underestimates expenditure and therefore, overall, the governors' alternative proposal does not create a financially sustainable school in the longer term. It is appreciated that this recommendation will be disappointing to both school communities, noting that there is some divided opinion found in the consultation feedback of the proposal not being supported including parents/carers from Holy Trinity. It is recognised, given the situation of schools funding arrangements and the current demographic context in the borough, how challenging it is to bring forward viable alternative proposals for consideration and the consequent time that is required to ensure due diligence is taken in assessing such proposals."

Consideration of Case

25. The arguments made on behalf of the Diocese are as follows:

"1. There is a lack of clarity in relation to the modification and conditions attached to the closure decision, but based on the consultation responses and discussion at Cabinet, there is evidence of support in November 2024 from the Authority for the amalgamation of the two schools and in effect an invitation to the schools to put forward a proposal on that basis.

2. Whilst the schools did make a proposal, it is accepted that the statutory notice did not provide sufficient detail as to the religious character of the amalgamated school and it is questionable on what basis the governing body of Fenstanton Primary School, a community school, could make such a proposal, despite the invitation by the Authority to do so.

3. Any purported decision by the Authority post 28th April based on the January statutory notice is invalid as the time period for any decision had lapsed, with the consequence that the School's Adjudicator is now the decision maker for that proposal.

4. Any purported decision by the Authority on 16th May to simply close the schools irrespective of any amalgamation proposal would amount to a revocation or further modification of the September statutory notice and proposal and such a decision can only be made after a fresh statutory consultation, which has not taken place.

5. To the extent any lawful decision has been made by the Authority, the governing bodies of the schools and SDBE seek to appeal that decision and refer the matter to the School's Adjudicator.

6. As the proposer, SDBE is within its rights to make a proposal for a new school under section 11 to be formed of the amalgamation of Holy Trinity and Fenstanton. Whilst amalgamation is not a statutory concept and is not specifically recognised in the 2006 Act, it is referenced in the DfE guidance on "Opening and closing maintained schools", which the schools and the Authority are expected to comply with.

7. Whilst no specific informal consultation has taken place regarding a proposal to open a new school under section 11, this was implicit in the Authority's modified closure decision following extensive community and stakeholder consultation. The representation period for the new school proposal is still ongoing. The Authority's ability to decide on that proposal is not triggered until the expiry of the representation period and any decision made before then on that proposal or any related proposal is unlawful. Given the Authority's obvious stance on the matter indicated by the purported decision on 16th May, we would ask that the Adjudicator steps in to make a decision on that proposal or that the Secretary of State exercises their power under Section 12(1) of the 2006 Act to direct the Authority to refer any proposal now being made in respect of the schools to the Adjudicator for determination."

26. As stated above, the Diocese has referred Proposals 1 and 2 to us. We consider this to be a lawful referral and that we have jurisdiction to consider these proposals. We also consider that we would have jurisdiction to consider them irrespective of any referral because the Council had not made a decision in respect of Proposal 2 (and in consequence Proposal 1) by 28 April 2025. The Council, however, takes a different view, and we have considered the representations made to us by the Council with considerable care. These representations are quoted below.

"The [Council's] position is [therefore]: -

(1) the decision of November 2024 effected the closure of the schools.

(2) the Diocese has published unlawful proposals for the creation of a new school, with the potential for greatly confusing local parents and others in the schools' communities.

(3) there is no decision which stands to be referred to the OSA;

(4) there is no basis on which the Secretary of State could require any matter to be referred to the OSA...

On 4 November 2024 the decision taken as regards the schools was: -

"1. To approve the Closure of Fenstanton Primary School with modifications, subject to certain conditions being met.

2. To approve the Closure of Holy Trinity CofE Primary School with modifications, subject to certain conditions being met."

As the report explained (p 59):-

"Reasons:

The recommendation is essentially to approve the proposal to close Fenstanton school, however Officers would like Members to consider an alternative proposal to amalgamate Fenstanton Primary School with Holy Trinity CofE Primary School, which may have merits to consider. See appendices BB and CC."

The report then explained the alternative proposal as follows:-

"How will this proposal work:

Cabinet would on November 4 make a decision to approve the decision to close Fenstanton school with modifications, subject to conditions being met.

The schools would become the new 'proposers' and would need to issue their own Statutory Notice to consult on the amalgamation, as part of the statutory guidance process. This would last 28 days.

This would be a new consultation process however and the LA should aim to make a decision quickly after the close of the new representation period.

Officers would recommend making a decision in March or April 2025 following the publication of admissions arrangements of all schools which must be published by law, by March 15. ... The LA would only be the decision-making body as per the guidance for closing/amalgamating LA maintained schools and would consider the merits and viability of the new proposal...

On 31 January 2025, the schools published a purported statutory notice headed "Proposal to amalgamate the Student Body of Holy Trinity, Church of England,

Primary School and Fenstanton Primary School, from 1 September 2025". A separate document, entitled "Formal Consultation" and a "Pre-Publication Consultation"... explained that "This proposal would see the discontinuation of Fenstanton's DfE number and a new Church of England, 1 form entry, primary school created, using the current Holy Trinity DfE number" Neither of the Schools had the power under the 2006 Act to propose the discontinuation of FPS, or to create a new school in this way. Accordingly, these proposals were unlawful and a nullity. On 16 May 2025, Cllr Ben Kind, Cabinet Member for Children, Young People and Families, exercising delegated powers, received a report on the schools' proposals...

On 22 May 2025, the Council wrote to parents and carers of pupils at the schools informing them of the confirmation of their closure and offering opportunities to ask questions and obtain guidance. The WS⁴ Letter says, rather confusingly, that matters should or could be referred to the OSA. This again is misconceived. First, WS contends that the schools' unlawful proposals should be referred to the OSA. The WS Letter argues that the Schools' proposals were the subject of a statutory notice which "was purported to be issued by the governing bodies" on 31 January 2025; that the 4 week representation period in relation to those proposals ended on 28 February 2025; that the two month period for determination of the proposals (reg 14 of the Regulations) ended on 28 April 2025; and that since the Council did not determine them within that time period, they had to be referred to the OSA (paragraph 13 of Schedule 2 to the 2006 Act). This is incorrect. The schools' proposals were unlawful since they were not proposals which the schools could make. WS (who act for the schools as well as for the Diocese) all but concede this, and indeed the WS Letter correctly describes the notice of the schools' proposals as merely "purported". It was not possible for the Council to do anything other than regard the proposals as unlawful. They were not capable of being determined, and not capable of being referred. Consequently, there were and are no undetermined proposals to refer to the OSA".

27. In relation to proposal 3, the Council's view is that the Diocese's "purported proposals" are predicated on proposal 2 being a nullity:

"...the Schools' Proposals and the Diocese's Proposals cannot exist together. The Diocese had it in its power to issue proposals which complied with the 2006 [Act] and the 2013 Regulations i.e. consult about VA proposals, and then to decide whether to publish statutory proposals, and if so to accompany them with the prescribed information. It failed to do so. There had been no consultation by the Diocese, in breach of s 11(6) of the 2006 Act. Furthermore, the Diocese failed to comply with

⁴ WS refers to Winkworth Sherwood, solicitors representing the Diocese and the governing bodies of FPS and HTPS.

many of the requirements (the Council counted over 10) as to the information which must be given with a statutory notice of proposals by reg 9 of and Schedule 1 to the School Organisation (Establishment and Discontinuance of Schools) Regulations 2013 (“the 2013 Regulations”).

28. The Council states that it wrote to the Diocese pointing out the various ways in which its proposal for a new school was unlawful, and requested that the proposal be withdrawn forthwith. The letter stated that if the Diocese did not withdraw the proposals, the Council would send a judicial review pre-action protocol letter the following day. A short response from WS was sent on 14 May 2025. The Council has not brought judicial review proceedings since it “does not want to create the cost and aggravation of litigation involving its education partners. But this does not alter the fact that the Diocese’s proposals are flawed”.

Conclusions

29. Our conclusions in this matter are set out below. We have set out the decision of 4 November 2024 in detail in this determination, since this is the decision which is stated to have been confirmed in May 2025.

30. First, the decision of 4 November 2024 imposed ‘conditions’ which are not capable of being imposed and ‘modifications’ which are unspecified. It was, therefore, an unlawful decision. Regulation 16 of the Regulations sets out the events which are capable of being prescribed as conditions for approval of a proposal. The complete list is set out below.

16.—(1) The events listed in paragraph (2) are the prescribed events that may be specified in an approval given under paragraph 8(5) of Schedule 2 to the Act.

(2) The prescribed events are—

(a) the grant of planning permission under Part 3 of the Town and Country Planning Act 1990;

(b) the acquisition of the site on which the new school is to be constructed;

(c) the acquisition of playing fields to be provided for the school;

(d) the securing of any necessary access to a site referred to in sub-paragraph (b) or playing fields referred to in sub-paragraph (c);

(e) the entering into an agreement for any necessary building project supported by the Department for Education;

(f) the making of any scheme relating to any charity connected with the school;

(g) the establishment of any foundation meeting the requirements of section 23A of SSFA 1998;

(h)the formation of any federation (within the meaning of section 24(2) of EA 2002) of which it is intended that the proposed school should form part, or the fulfilling of any other condition relating to the proposed school forming part of a federation;

(i)in the case of maintained schools which are not special schools, the agreement to any change to admission arrangements of any other school or schools specified in the approval;

(j)in the case of a proposal under sections 7, 10 or 11 for a maintained school or maintained special school, the decision of the Secretary of State not to enter into any agreement under section 1 of the Academies Act 2010 for the establishment of an Academy;

(k)in the case of discontinuance proposals, the entering into any agreement under section 1 of the Academies Act 2010 for the establishment of an Academy;

(l)in the case of discontinuance proposals, the agreement of the Secretary of State to extend or enlarge an existing Academy;

(m)in the case of proposals to establish a maintained school in place of an existing independent school, the securing of approval by the Secretary of State to relax the requirements of the School Premises (England) Regulations 2012 as provided for by section 543(1) of EA 1996;

(n)in the case of proposals to establish any other maintained school, the securing of approval by the Secretary of State to relax the requirements of the School Premises (England) Regulations 2012 in respect of school playing fields as provided for by section 543 (1) of EA 1996;

(o)in the case of proposals whose funding is dependent upon capital receipts from the disposal of any school land or buildings, the securing of consent from the Secretary of State for the disposal as provided for by paragraph 2 of Schedule 1 to the Academies Act 2010 or section 77 of SSFA 1998, or determination in accordance with Schedule 22 to SSFA 1998 as applicable;

(p)in the case of proposals to establish a maintained school, the Secretary of State making a direction under section 90 of EA 2002 that the National Curriculum for England shall not apply or shall apply with modifications;

(q)in the case of discontinuance proposals, the decision of the Secretary of State to establish a new further education college under section 16 of the Further and Higher Education Act 1992; and

(r)where the proposals in question depend upon any of the events prescribed in subparagraphs (a) to (q) occurring by a specified date in relation to proposals relating to any other school or proposed school, the occurrence of such an event.

A condition that other persons “propose a viable alternative proposal for amalgamation within an agreed timeframe and criteria” is not a condition prescribed under regulation 16 and is therefore a condition which the Council had no vires to impose. It is also not a condition precedent to approval, which each of the statutory conditions set out above are. It is not saying that the proposal will be approved if some future event (such as the grant of planning permission) takes place. Instead, it purports to say that the proposals will be approved unless some future event takes place, in this case the future event was that a different proposal was put forward. The decision cannot be seen as a conditional approval and, even if it were, the condition is not one permitted by statute.

31. In addition, Proposal 1 is not a modified proposal. There is no proposed modification of the proposal itself.

32. The decision of 4 November 2024 purports to approve the proposal to close the two schools but not to finalise that decision until, within some unspecified timeframe, another proposal is made which might make the Council change its mind and not go ahead with closing the schools. This was not a decision open to the Council. In our view it does not amount to a decision to close the schools.

33. Furthermore, the “conditions” imposed by the Council were incapable of being satisfied because, as has later been acknowledged by the Council, the governing body of FPS has no jurisdiction to propose its own closure. This is despite the fact that, at the meeting of 4 November, the governing bodies appeared to be encouraged by the Council to develop the unlawful proposal in question.

34. The May decision purports to be a confirmation of the original proposal to close HTPS and FPS. However, the original proposal no longer existed in any lawful form and therefore could not be approved. Whilst the closure of both schools was the proposal which was originally published in the statutory notices of 9 September 2024, it was made into an unlawful modified and conditional proposal by the Cabinet decision of 4 November 2024. Therefore, a decision to confirm the “original decision to close Holy Trinity Primary School and Fenstanton Primary School in September 2026” was not a decision the Council could lawfully make. We therefore determine to reject Proposal 1 on the basis that the Council’s decision of 4 November 2024 was unlawful. As a result, the proposal itself was rendered unlawful and the procedures preceding its determination by the Council in May were flawed.

35. . In any event, the Council had no jurisdiction to make any decision on Proposal 2 (and in consequence Proposal 1) on 16 May 2025. A decision was required to be made on Proposal 2 on or before 28 April 2025. Since no decision was made by that date, any decision on whether to approve or reject the proposal should have been referred to, and made by, the Adjudicator. The Schools Adjudicator and local authorities are creatures of statute and only able to exercise functions assigned to them in legislation. These functions are as set out in paragraph 17 above. Neither the Council nor the Adjudicator is able to declare Proposal 2 to be void. We therefore determine to reject Proposal 2 on the grounds that it is an unlawful proposal. We have reached this conclusion on the basis that we agree with the Council that the governors of a community school are not permitted by the EIA to

propose the closure of that school. We also agree that, regardless of whether it would have been lawful for the governing body of HTPS to publish a proposal to close that school, neither proposal can be approved since the HTPS proposal is part of, or linked to, the unlawful FPS proposal.

36. It is our conclusion, therefore, that since we have rejected Proposals 1 and 2, the effect of this is that both FPS and HTPS remain open. The Council should take the steps necessary to advise the parents and all persons who have been informed that the schools will close in September 2026 that this is not what has been determined. This should be done as quickly as possible.

37. Proposal 3 is yet to be determined. The Council is the decision-maker unless no decision is made within the required timeframe. The Adjudicator can only assume jurisdiction where no decision is made within that time frame; a decision is made by the Secretary of State under section 12(1) of the EIA to direct the Council to refer the proposal to the Adjudicator for determination; or there is a request for referral to the Adjudicator after the Council has made a decision on the proposal.

Determination

38. Under the power conferred on us by Paragraph 17 of Schedule 2 to the Education and Inspections Act 2006 and The School Organisation (Establishment and Discontinuance of Schools) Regulations 2013, we have considered two related proposals:

- i) The first is a proposal by Lambeth Council to close Fenstanton Primary School and to close Holy Trinity Church of England Primary School.
- ii) The second is a proposal by the governing bodies of Fenstanton Primary School and Holy Trinity Church of England Primary School to amalgamate the two schools by closing Fenstanton Primary School with Holy Trinity Church of England Primary School remaining open and located on the site of Fenstanton Primary School.

39. We hereby reject each of the proposals, which means that both schools remain open.

Dated: 17 July 2025

Signed:

Dr Marisa Vallely

Mr Tom Brooke

Joint Chief Schools Adjudicators.