

## **Appendix 1**

### **Report of Representation Responses**

Determination of the Statutory Notice to Revoke the Notice to Close Culverhay School

28 July – 8 September 2011 Representation Period

#### **Key Points Raised in Representations**

##### **These representations have been addressed in the Cabinet report:**

There cannot be a future for a small single sex boys Community school.

Representations have not been taken into account in reaching the decision.

Comments by Schools Forum on 5<sup>th</sup> July were not reported to Cabinet.

There should have been wider consultation with other schools and the Schools Forum on the proposal to become co-educational.

There has been inadequate consultation about revoking the closure decision.

The notice was published over the school holidays and was flawed.

Surplus places at Culverhay School and at other schools in Bath.

Revenue and capital funding implications for other schools as a result of Culverhay staying open - no capital receipt and revenue cannot be re-distributed.

The viability report indicating that a small school could be viable influenced the decision to revoke the closure of the school but it was misleading.

**These representations are not relevant to the issue the Cabinet is being asked to decide.**

**The Council does not have a decision making function in relation to the issue of the Academy or Free School. It is for the Secretary of State to determine whether an Academy or Free School will occupy the Culverhay School site and as he has already received proposals regarding both options. This decision has not yet been made by the Secretary of State.**

The Call-in should not have been delayed until after the local elections.

The Cabinet decision to revoke the decision to close the school should have been subject to Call-in.

The closure decision should still stand because there have been procedural errors in the Call-in process.

The Cabinet decision on 14 July to publish a notice to propose the revocation of the closure decision was based on incomplete information.

The Call-in was no longer valid once a preference for a Free School or an Academy was identified.

The Council was not advised that upholding the Call-in would preclude a Free School.

An Academy or Free School on the site require the closure of Culverhay School.

The Free School proposal is dependent upon being given the Culverhay site when the school closes.

The Cabinet could not reasonably support a Free School or an Academy because relevant information was not made available to them.

There should have been more consultation about keeping a small boys' academy.

The Council should consult on and decide on whether to have an academy.

The Cabinet should have had more information about the transfer of land to an Academy or a Free School and the land should come back to the Local Authority if the Academy does not succeed.

The decision for an Academy was made in advance of due and proper process and did not include the Free School option.

The Secretary of State should not decide between a Free School and an Academy as the site would not be available if revocation is completed as Culverhay School would continue to occupy the site.

The validity of the proposed curriculum for the Academy in the context of need in Bath should have been part of the decision-making.

The Council should be able to consider the business plans for an Academy and a Free School.

The scrutiny processes of the Council should have had more information to weigh up the Academy or Free School alternatives.

The Secretary of State would be making a premature decision if a decision regarding an Academy is made before the revocation of the closure decision has been completed.

The notice only referred to replacement by an Academy despite the fact that no decision had been made to support this option over a Free School.

Discussions with the Department for Education (DfE) about revoking the closure decision prior to the Call-in were improper and should have been disclosed to Council and Cabinet.

The DfE had advised that the statutory closure route was the appropriate way forward, not revocation to keep school open and it was irrational for DfE to support revocation.

The educational standards at Culverhay mean that the school could be closed by the Secretary of State.

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**15 August 2011**  
**As supplemented**  
**22 August 2011**  
**As further**  
**supplemented**  
**7 September**  
**2011**

Children's Services Capital and Organisation Team  
Bath & NE Somerset Council  
Riverside  
Temple Street  
Keynsham  
BS31 1LA

Dear Sirs,

**Proposal to revoke the Notice to Close Culverhay School, Bath**

I refer to the statutory notice published on 28 July 2011 and wish to object to the proposal and make the following representations as set out herein. Although the period for representations does

not expire until 8 September 2011, representations were made on earlier dates because I became aware on 12 August 2011 that the Secretary of State may be asked to make a decision on whether to approve a Free School or a Sponsored Academy on 18 August 2011. This position was later confirmed by a senior Council Officer. Without prejudice to further representations and / or changes to representations I have made within the representation period, it is clear that any such decision by the Secretary of State before the expiration of the statutory consultation period for revocation of closure would be unsound.

#### Prospective Decision by Secretary of State and Statutory Notice

1. There can be no basis for such a premature and prejudicial decision to be made by the Secretary of State when:-
  - i) the statutory proposal to close Culverhay, published on 16 December 2010, and the related Council / Cabinet decision to close made on 23 February 2011 are still in effect and
  - ii) the Council is in the process of consulting on a proposal to revoke the notice to close Culverhay and has not considered any objections or representations that may be made during the statutory period (expiring 8 September 2011) for such objections or representations.

It is, of course, quite possible, for reasons set out below that the Council / Cabinet may wish to reconsider the decision to revoke the closure of Culverhay having regard to the representations made during the statutory period.

It follows, therefore, that any such decision by the Secretary of State to decide on an Academy or a Free School before the end of the representation period and ensuring he has given due regard to the objections or representations that may be received from schools, residents and other parties and the Council's considered position upon review of same would be irrational, unreasonable and made with procedural impropriety. [*Prospective Grounds for Judicial Review (JR) 1*]

In this connection the Department for Education (DfE) was already aware and had apparently advised the Council that the statutory closure route was the most appropriate way forward (rather than revocation of closure) in terms of proceeding with a co-ed academy or a Free School. [*Prospective Grounds for JR 2*] See File Note of 4 July 2011 within FOI information released by the DfE under Case Reference 2011/0053641 on 11 August 2011 and attached to this letter. 'Likely that statutory closure route would best suit ....but note sensitivity as it will imitate the recent closure process now to be revoked.' It is not clear who exactly it would best suit as the name for the time being has not been provided by the DfE but the effect of closure being revoked would be that a Free School could not proceed. (It may also be that Closure would have given greater surety in the case of a prospective Academy as to a co-ed directly (rather than boys' initially and then conversion to co-ed after further and necessary consultation and with uncertain outcome - see below) and / or result in a lower cost to other schools in terms of the impact on the DSG-related funding).

The Council has acknowledged in a press statement to the Bath Chronicle on 24 August 2011 that 'Past practice has been to close under-performing schools and open a new sponsored academy on the existing school site.' It is therefore irrational for a revocation of

closure to be progressed by the Council and implicitly / explicitly supported by the DfE.

It is noted (from information released on 17 August 2011 under an FOI request to the Council made on 20 July 2011 ) that Robert Back of the DfE had been in touch with the Council about Culverhay and he had advised (as per e-mail from Ashley Ayre (B&NES) dated 25 June 2011) 'that the DfE had decided against intervention into Culverhay i.e. making it an academy purely because we [the Council] had been about to close it....In essence the school is on the radar for the DfE due to its low level of attainment in comparison to our other schools, also it is viewed as having less chance of attaining the new benchmark of 50% [5 A\*-C including English and Maths]. (Current benchmark is 35%)' This information was not advised to Council on 14 July 2011 or detailed in the Cabinet public papers yet it is highly relevant to educational standards at the school and in B&NES - one of the principal purposes of the Bath Secondary Review and the related Culverhay closure decision. Council should have been advised of the DfE's position and its view of Culverhay School and, if they had been, they may have taken a different decision as regards upholding the purported call-in referral. In this connection it is noted that Culverhay's educational performance had been the subject of much debate during the closure process given the undue emphasis being placed by the Governing Body and others on Contextual Value Added. The clarity of the DfE's position would have been very helpful and possibly critical in terms of confirming the school's underperformance and the inevitable intervention there would have been had it not been decided to close the school in February 2011. [*Prospective Grounds for JR 3*] It appears to be irrational now for the DfE to be supporting the revocation of closure of Culverhay School in such circumstances and to use public resources in relation thereto just so as to create an additional Academy that would not otherwise be required (and as is so evidenced by the Bath Secondary Review). In this connection it is noted that Ashley Ayre's record on 25 June 2011 of the conversation with Robert Back indicated that 'the relevant sponsor will receive £300-400k from the DfE to help develop the school too.' [*Prospective Grounds for JR 4*]

There is further correspondence between the Council and the DfE regarding the discussions with possible sponsors including an e-mail from Maggie White (B&NES) to Richard Thomson (Culverhay Head) of 6 July 2011 (11.16) 'I think Robert [Back] wants this set up by the end of July so the Statement of Intent can be written and submitted to Ministers in August.' It is, of course, important to note that as of 6 July 2011 the Council had not even made a decision on the call-in and yet there is a high level of activity and indeed undue haste by the Council and DfE. There is clear intent at this stage by both the Council and the DfE to make a decision on an Academy before the statutory period for revocation of closure would have expired and representations and objections properly considered by the Council and the DfE. As an aside, one might ask why the DfE was not itself supporting the Closure given its views on the school as recorded above. However, this collusion may help explain the background as to why the Statutory Officers' advice was changed as regards a call-in of any decision by Cabinet at its meeting on 14 July 2011 - see below - i.e. when there was a realisation that any such period of proper scrutiny would mean the Cabinet's and DfE's timetable could not be met.

Council was also not advised at its meeting on 14 July 2011 that a decision to uphold the call-in and a subsequent decision by Cabinet to propose and proceed with the revocation of closure would preclude the Free School possibility. To the extent that the consideration of the call-in by Council had any validity - for which see below - then key and necessary information was withheld from Council. [*Prospective Grounds for JR 5*] It is noted that the Minutes of Council refer to one of the reasons for upholding the call-in being 'the results of

the parent survey, which showed that a co-educational school would attract significantly more pupils'. Such a comment or observation is inconsistent with precluding a Free School (whose proponents conducted the parent survey) and / or supporting a 'small' Academy as indicated in the Statutory Notice.

For the Secretary of State now to proceed to a decision as between an academy and a Free School would be improper particularly as any such decision would explicitly or implicitly consider the availability of the site which would clearly not be available if the revocation proceeds. [*Prospective Grounds for JR 6*] The Secretary of State must await the expiry of the statutory objection and representation period and the Council's consideration of objections and representations.

The DfE's correspondence and activities as related to Sirius Wood, as set out below, are also germane.

This letter and copy to the Secretary of State serves as notice of an Objection and of representations that are or may be made by interested parties in relation to the statutory process of revocation of closure.

2. The statutory notice for the proposal to revoke the notice to close Culverhay is flawed:-

i) The Council (through its Cabinet) resolved on 14 July 2011 'To agree that its preferred option for Culverhay School would be for the school to become co-educational, either as an Academy or as a Free School.' The Statutory Notice seeks to justify the inappropriateness of closure of the school on the basis that 'an externally commissioned study has shown that a relatively small school with a pupil centred curriculum making use of flexibilities as an academy can be viable.'

It is clear from the FOI information from the DfE attached that subsequent to the Cabinet meeting on 14 July 2011 the Cabinet's decision was advised to the DfE - see e-mail dated 20 July 2011. The DfE's response was that 'a maintained school cannot become a Free School so I take it that means you are working with the Governing Body to pursue conversion to a sponsored academy.'

Following that correspondence (which confirmed what was already known by Council Officers prior to 14 July 2011 - see Maggie White's e-mail of 28 June 2011 released under FOI and quoted below), the proper action would have been for Cabinet and possibly Council to have been formally advised that proceeding with the revocation of closure would be inconsistent with the decisions made on 14 July 2011 and that a new decision was required. [*Prospective Grounds for JR 7*]

Maggie White's e-mail of 28 June 2011 (Confidential Feedback from Robert Back (DfE)) stated on page 2 'Resistance from Free School Group - once a democratic decision is made to keep school open, the use of C/H premises will no longer be available to Sirius Wood School. They will have to find alternative premises, possibly outside the locality and compete with 7 other schools for pupils.' That e-mail also recorded that 'Governors need to see likelihood of bleak future without going to academy: inspection-direct intervention-direction by SoS to become an academy.' It should be remembered here that the call-in hadn't yet even been considered by Council and further that none of this information was advised to Council or the public on 14 July 2011.

As at the date of issue of the statutory notice on 28 July 2011 no decision had been made by the Council (through its Cabinet or otherwise) to support one or other of an Academy or a Free School. It was therefore not appropriate to suggest in the Statutory Notice that only one of the options was being considered whether by the Council and / or the DfE. Furthermore, the size of the school was not mentioned at all in the Cabinet resolution. *[Prospective Grounds for JR 8]*

ii) The wording of the statutory notice had been the subject of prior clearance with the Department for Education (DfE) in exchanges as between 11 July 2011 and 14 July 2011 as per FOI information released by the DfE. The wording of the notice was not materially amended prior to publication on 28 July 2011 notwithstanding the decision of Cabinet which was not, it would appear, as anticipated in the pre-clearance correspondence. i.e. the Cabinet decided on 14 July 2011 that the Free School should remain an Option and Council itself had no reason to believe that purportedly upholding the Call-in precluded the Free School option.

It is also noted from FOI information released by the Council that on 12 July 2011 Maggie White (B&NES) sent an e-mail to Richard Thomson (Culverhay Head) requesting certain information 'I've now had a conversation with Robert Back (OSC). He has asked for the following information asap (so we can assess whether there could be a challenge from Free School group)'

(I would note that as at 11/12 July 2011, no decision had been made by the Council other than for the closure of Culverhay School. See below for comments as regards possible ultra vires expenditure and activity by the Council.)

iii) With regard to the statement referencing the externally commissioned study, the commentary is grossly misleading. The report by Mr. David Snashall (Annex II to the Cabinet's report on 14 July 2011) stated quite clearly that it was an 'Interim Independent Report'. None of the conclusions (1-14) indicated that Mr. Snashall's study 'has shown that a relatively small school with a pupil centred curriculum making use of flexibilities as an academy can be viable'. Indeed the last conclusion was 'Action on each of these points does not necessarily mean that the school will remain viable with a sustainable future when a national funding formula is introduced - however, it should move the school towards having sufficient numbers and spending patterns (that) have a significant chance of being sustainable.'

I suggest the reference to the external study within the statutory notice was grossly misleading having regard to the full content of the Interim report by Mr. Snashall. The brief to Mr. Snashall by the Council made no reference to an academy and was specifically related to 'school viability'; his conclusions and commentary made no reference to the additional flexibilities of an academy. *[Prospective Grounds for JR 9]*

iv) As part of the Council's justification (within the terms of the statutory notice) for the relief of duty to implement the closure, the Council indicates that additional funding has been made available to make modifications to the school buildings, to support the school in addressing overstaffing and restructuring and to allow the school to pursue the option of the school becoming an academy and then becoming co-educational.

Representations and concerns expressed by the Schools Forum at its meeting on 5 July 2011 (which should have been reported to Council / Cabinet) *[Prospective Grounds for JR*

10] included 'Are more co-ed places wanted in Bath? Should this be decided by the community rather than the LA?' The Schools Forum were / are suggesting that the issue of co-ed places should be a matter for the community who may conclude that there are already sufficient co-ed places given the conversion of Oldfield Girls to a co-ed Academy consequential upon the Bath Secondary Review. It would certainly be both prejudicial and unreasonable for a decision to be made by the Secretary of State to approve an Academy or a Free School without Oldfield and / or other local schools first having the opportunity to object or make representations within the statutory period and for these to be considered by the Council before implementation of the revocation of closure. *[Prospective Grounds for JR 11]*

The Council has now received notice of Objections and Representations relating to the revocation of closure notice from four schools whose Headteachers are members of the Schools Forum and from the Chair of the Schools Forum on behalf of the Schools Forum - see attached. It is noted the e-mails / letters include confirmation of the Schools Forum's original decision to support the closure of Culverhay, opposition to the proposed revocation of closure, and reference the timing of the Statutory Notice and the limitations as to opportunity for members of the Schools Forum to comment given the summer break. The Objections and Representations made by the Schools Forum must be considered by the Council before any premature and prejudicial decision by the Secretary of State.

v) Any decision to proceed with a 'small boys' academy' and substantial related public funding without any certainty as to whether the subsequent consultation (which should include other schools and the wider community affected) will support a change to co-ed would also be unreasonable and irrational. *[Prospective grounds for JR 12]* As any sponsored Academy will be benefitting from Council funds it should be for the Council to determine the extent of consultation and indeed to give due consideration to any business plan generally given the potential impact on other schools. The Council / DSG funding considerations (including but not limited to site availability as the site has an estimated value of £6-8m) must override any 'standard' arrangement for an Academy whereby any business plan does not necessarily need to be considered or approved by the Council directly. It would appear from the Council's press comment on 24 August 2011 that the Sponsored Academy application was submitted by the Culverhay Governing Body and the Council. Any such application has not been made in accordance with any proper decision of Council or Cabinet under the Council's Constitution. *[Prospective grounds for JR 13]*

Indeed, the Council, Councillors, the Schools Forum and the B&NES public have not been advised as to what exactly is proposed in terms of an Academy, what it will do, who it may involve (whether Cabot or otherwise) etc. There should have been an appropriately detailed paper going to Cabinet and / or Council and available in the public domain, particularly given the very substantial financial commitment by the Council (including but not limited to the site value of £6-8m which will presumably be transferred to Cabot) and the impact on other schools. It would appear that if the Academy is unsuccessful then the benefit of any alternative land use sale will be for the benefit of the Academy / Cabot and not B&NES schools. If the school was closed then a lease could be given to any new Academy or Free School which could be terminated in the event of any subsequent failure and thus the benefit of alternative land use value protected for B&NES / B&NES schools. *[Prospective Grounds for JR 14]* It has been suggested by Cabot and others that the curriculum proposed for any Academy will be substantially different from other B&NES secondary schools and will be vocationally focused. Council / Cabinet should have considered what evidence if any there was for such a proposal for an Academy given the information

emanating from the Bath Secondary Review, why would such a curriculum be considered appropriate for the local community near Culverhay as opposed to other areas of B&NES and why Council / Direct Schools Budget resources should be prioritized for the benefit of an Academy as opposed to other priorities as may be identified by the Schools Forum.  
*[Prospective Grounds for JR 15]*

vi) The Schools Forum also expressed a number of other concerns at its meeting on 5 July 2011 - again not reported to Council / Cabinet on 14 July 2011 including that 'keeping Culverhay open is costing the rest of the pupils across the authority'. This is a valid concern and the statutory consultation period provides the opportunity for other schools to ask the Council to ensure Schools Funding and Capital Funding availability are not adversely affected by any decision to revoke the closure of Culverhay. i.e. other schools should be in no worse a position than would have been the case with Culverhay's closure. At the end of the consultation period the Cabinet / Council may have to consider whether it is prepared to provide the additional funding to meet any such reasonable demand by other schools (which may be significantly more than the funding currently allocated and referenced within the statutory notice and would be different depending upon the relevant option chosen and is, as yet, unquantified by the Council). Indeed the Cabinet / Council may need to consider whether proceeding with closure will result in a lower cost to the Council and / or our schools than revoking the closure notice even if it subsequently decided (should it be the will of Council) to make the site available for future educational use (whether as a 'small' Academy or as a Free School).

Sirius Wood (Free School proposer) may also wish to make representations during the statutory period particularly as it would appear they have been seriously misled having regard to the FOI information released and relating to discussions as between the Council and DfE prior to and subsequent to 14 July 2011, the decision of Cabinet on 14 July 2011, and the terms of the published Statutory Notice. Their proposal for a Free School was not appropriately detailed in the Cabinet papers and the Council has not been in a position to consider the advantages and disadvantages of each of the options that should be considered - Sponsored Academy (and size), Free School, Closure, Closure with subsequent site availability for other educational options (including Academy / Free School). There are different financial and educational implications for the Council, the DSG and other schools in each case and none of these have been appropriately considered and addressed in Council / Cabinet Agenda Papers or been subject to appropriate scrutiny under the Council's processes which scrutiny should take place before not after any Secretary of State's decision as to an Academy or Free School. *[Prospective Grounds for JR 16]* It is clearly now possible that Sirius Wood may object to the revocation of closure because a Free School could not proceed on such a basis. Indeed they might support closure on the proviso that the Council gives proper consideration to a Free School vs. 'small' Sponsored Academy on the site. (While I do not agree with Sirius Wood's proposals I do believe they should be treated fairly and not deliberately misled or lied to).

In this connection the Sirius Wood website reports that they received a letter from the DfE on 25 July 2011 inviting them to an interview in London in August. I understand that meeting took place on 2 August 2011 and I received a copy of a letter from Sirius Wood on 8 August 2011 advising me as to the discussions held in London. See attached. The DfE was fully aware from correspondence that took place on 20 July 2011 and included in the FOI information released by the DfE that should the Council proceed with the revocation of closure then the Free School would not be an option. Indeed the DfE's specific response on 20 July had been that 'a maintained school cannot become a Free School so I take it that

means you are working with the Governing Body to pursue conversion to a sponsored academy.' There are, of course, other relevant references within the FOI information including Maggie White's e-mail of 6 July 2011 (referred to above) regarding a potential challenge by the Free School proponents. There is also an e-mail from Maggie White on 28 June 2011 as quoted above which refers to 'Resistance from Free School Group' and states 'Once a democratic decision is made to keep school open, the use of C/H premises will no longer be open to Sirius Wood School. They will have to find alternative premises possibly outside the locality and compete with 7 other schools for pupils.' (This gives further evidence of a) the approach by the Council as to the Free School proposal and b) that Council should have been informed that upholding the call-in would preclude a Free School).

Given Maggie White's e-mail of 6 July 2011, her file note of 28 June 2011 and the exchange on 20 July 2011, the DfE's letter to Sirius Wood received on 25 July 2011 and the subsequent meeting on 2 August 2011 would appear to have had no purpose other than to give an appearance of giving consideration to the Free School proposal when by that date the DfE was clear that no such consideration was being given. Of course, the correspondence and meeting may have been arranged with a view to lowering the risk of an aforesaid challenge by Sirius Wood although I suggest it may now have done precisely the opposite.

A premature decision made by the Secretary of State would be unreasonable (i.e. before the end of the consultation period and consideration of objections and representations) particularly given the content of the FOI information released including but not limited to the file note of 4 July 2011 referred to above, the e-mail of 30 June 2011 (which included the enigmatic wording 'The one that makes me twitchy is the proposal for the Culverhay site...assumed an Academy proposal would take precedence as the Free School would not have a site if Culverhay isn't closed. But I'm not so sure...') and the bizarre correspondence related to Sirius Wood which would have to be described as at best misleading and at worst duplicitous. [*Prospective Grounds for JR 17*]

#### Other Issues including matters of procedural impropriety

The validity of the statutory notice for the revocation of closure must also be seen in the context of the following :-

1. The information provided to the Council / Cabinet.

i) It is clear that the discussions that had been held with the DfE were not appropriately disclosed to Council / Cabinet / publicly on 14 July 2011 and it is noted that there was no basis for such meetings to be held until after the Call-in of the decision to close Culverhay had been determined or Council / Cabinet had otherwise formally approved a policy change on the closure and any related use of resources. Without limitation the key information withheld included the fact, nature and details of the discussions that had been held, the advice relating to Closure being the best way forward, the DfE's views on the performance of the school and that there would already have been intervention but for the Council's decision to close the school, the terms of the draft revocation notice and the fact this was already agreed with the DfE prior to 14 July 2011, the comments about the Free School proposal, the discussions related to potential sponsors, the Council advice to the DfE that it had changed its mind about closure before any such decision had been made, and the preference being expressed as regards an Academy with a strong sponsor. [*Prospective Grounds for JR 18*]

ii) As indicated above Council was not advised that upholding the call-in would preclude a Free School.

iii) Appropriate details of the business plans for a Sponsored Academy and for a Free School should have been made available to Cabinet (particularly given the scale of funding and the potential impact on other schools) to enable an informed decision on the Options and have been subject to appropriate scrutiny by the relevant Panel(s). *[Prospective Grounds for JR 19]*

iv) The Cabinet's decisions on 14 July 2011 were irrational. *[Prospective Grounds for JR 20]* The first decision (E2233R) to proceed with the revocation of closure of Culverhay precluded a Free School whereas the 'other' decision (E2289) 'agreed that its preferred option would be for the school to become co-educational either as an Academy or as a Free School.' It was the Cabinet's decision to include both options in its final resolution. The report invited the Cabinet to 'determine which of the options for a co-educational school (in Appendix 2) it wished to support.'

Indeed the 'Rationale for decision' section of the Decision Register Entry for E2233R specifically states 'The Cabinet were very conscious that the local community was strongly in favour of allowing Culverhay School to seek co-educational status either as an Academy or as a Free School and wanted to allow the school and community to make applications to the Secretary of State to this effect.' However, the Cabinet's decision 'that it wishes to REVERSE the earlier decision and to decide instead not to close Culverhay School' precluded the possibility of a Free School as clearly still intended under Rationale for decision.

The FOI information released by the Council includes an e-mail on 15 July 2011 from Richard Thomson (Culverhay Head) to Tony Parker (B&NES) referring to the Cabinet decision and raising a couple of questions:-

'1. I understood from Robert Back that as soon as the notice of closure is revoked, it is impossible for a Free School to open here because there is still a school here. If my understanding is correct, how is this reconcilable with Nathan's publicly stated position? [Cllr. Nathan Hartley, Cabinet Member with responsibility for schools]

2. Does Nathan really believe that the Free School and the Sponsored Academy are of equal value as proposals, or is this an example of a political compromise? (Obviously there is an element of self-interest here, because the Free School has apparently appointed its own Governing Body and Headteacher already.)'

The e-mail from Richard Thomson also includes a message to all staff and the following comment on the Cabinet deliberations - this element of the e-mail was omitted from the initial FOI release by the Council but was provided when challenged :-

'The Cabinet then went on to outline its policy for the future direction of the school. The member for Children's Services, Nathan Hartley, has been looking at three possible options:-

- a) LA maintained co-educational school
- b) Sponsored Academy
- c) Free School

He had come to the view that the first option was not feasible because of the prevailing

direction of travel in terms of educational policy at a local and national level. He felt that options b) and c) both had equal merit and both would be considered by the Secretary of State for Education in due course. The position of the administration seems to be that it is now for Mr. Gove to have the final decision.'

This e-mail affirms, from the school's perspective, the irrationality of the Cabinet's position. For some reason the FOI information released does not include a reply. Clearly to proceed with the revocation of closure precluded a Free School and this was known to Council Officers and Cabinet Members.

2. The Call-in was not or was no longer valid [*Prospective Grounds for JR 21*]

The call-in referred to Council was no longer valid by virtue of Rule 3 of the Call-in Procedures where there is a proviso that the period of Overview and Scrutiny shall not exceed 21 working days. The six week representation period for the Statutory Notice of Closure (published on 16 December 2010) ended on 27 January 2011. The Cabinet Member's decision was made on 23 February 2011 and was considered by the Children and Young People Overview and Scrutiny Panel on 21 March 2011 when the Panel decided to refer the matter to Council. In order to meet the 21 day requirement it would have been necessary for Council to have met and decided on the call-in (I believe the date of Council would have had to have been on or before 25 March 2011). The requirement of Rule 3 may not have been specifically advised to the Panel i.e. in terms of Officer advice but, in any event, it was the responsibility of the Panel to ensure that the call-in decision was made by the Panel or that an urgent meeting of Council was held within the stipulated 21 days overall allowed for call-in.

The Minutes of the Overview and Scrutiny Panel record Vernon Hitchman (Monitoring Officer) as stating 'that in referring the matter to Full Council the date of the meeting was for the Council and not the Panel to decide and it could be called at an earlier date than the next set meeting (May 19<sup>th</sup> 2011).' This advice was, I believe, flawed. The Constitution makes provision for Extraordinary Meetings to be called upon the request of 5 Councillors and for shorter notice to be given (than the standard 5 days). As indicated above it does not appear that the provisions of Rule 3 were addressed by the Monitoring Officer or the issue and implications considered by the Panel.

Had the call-in been decided by the Panel or referred to Council and a meeting held within the required 21 days then the decision to close Culverhay would have been confirmed (or otherwise) by the Cabinet Member on or before 28 March 2011. Not to have done so in such circumstances may have risked the intervention of the Schools Adjudicator as matters have to be referred to the Schools Adjudicator if not determined within 60 days of the end of the representation period (i.e. 27 January 2011).

3. Decision by Cabinet on 14 July 2011 to publish Statutory Notice should have been available for call-in [*Prospective Grounds for JR 22*]

The Cabinet decision to publish the notice should have been available for call-in consistent with the specific and unequivocal advice provided to me by the Council's Monitoring Officer on 13 July 2011 'I confirm that any decision which goes beyond noting the views of Council and, for example, proposes a different course of action such as revocation of the closure proposals - which is a separate legal process - would be properly subject to call-in. In my view the purpose of the rule [Rule 4] is to prevent the same issue being raised twice which would not be the case

here.'

This advice from the Monitoring Officer on which I was entitled to rely a) in respect of the right of call-and b) in terms of the Council's interpretation of Rule 4 was reversed prior to the Council Meeting. Any argument by the Council that the decision cannot be called in because it is only a step in a process is contradicted by previous validated call-ins on Culverhay that are comparable in terms of statutory processes and related consultation. There has been substantive correspondence on the matter since 14 July 2011 which will support my contention that the Cabinet decision should have been subject to call-in.

To the extent the call-in was not valid, as is my contention, in accordance with 2 immediately above, then Rule 4 would not be applicable in any event and Cabinet's decision would have been subject to call-in and not as now advised to the contrary by the Monitoring Officer.

#### 4. Use of Resources

Any Council and / or Culverhay use of resources prior to the change of the Council's policy decision on 14 July 2011 related to evaluating or progressing alternatives to Closure (including but not limited to the commissioning of the David Snashall report) is prima facie ultra vires expenditure or alternatively is evidence that the Council was treating the Closure Decision as not having been made in which case the matter should have been referred to the Schools Adjudicator within 60 days of the end of the Representation Period i.e. by 28 March 2011. *[Prospective grounds for JR 23]*

#### 5. Timing

The O&S process should have been concluded by 25 March 2011. It was not. Indeed there was also no attempt to ensure the call-in was referred to the next scheduled meeting of Council (i.e. 19 May 2011) at which time Council could have upheld the call-in (subject to its validity which is challenged for reasons given above) and for Cabinet to then approve expenditure in considering alternatives. Council expenditure before consideration of the call-in or a policy decision change against closure is not justifiable expenditure.

It is not now possible for the Council or the DfE to argue urgency in process or decision-making whether by the Council or the DfE having regard to the delay of over 3 months between a purported referral to Council and consideration by Council of the call-in.

I sought proper advice prior to Council which advice was given in unequivocal terms. I then properly challenged the Statutory Officers' reversal of that advice prior to and following the Council and Cabinet Meetings held on 14 July 2011. I believed it was appropriate and necessary that the Council through its Policy Development and Scrutiny Committee should have been able to call in and review the Cabinet decision to publish a notice of revocation of closure of Culverhay. I note the previous Administration's decision to close Culverhay had been subject to three separate call-ins whether of a decision to consult and / or to decide. I also note that neither Cabinet nor Council had the proper or necessary information to make a sound decision. It is now clear significant and relevant information was withheld and / or not provided and that there had been a predetermination by the Cabinet and the DfE in favour of a small sponsored academy that arguably is not the co-ed community school promised by the new Administration. It was therefore disingenuous and irrational of Cabinet, in those circumstances, to suggest a Free School was still being considered particularly given the contents of the FOI information and the terms of the draft and final statutory notice. Indeed there was no direct evidence that the Cabinet was not considering the Free School option until an answer to a question was provided at its

open meeting on 10 August 2011. I suggest that an appropriate decision in accordance with the Council's Constitution has not been made and was certainly not made transparently before, on or after 14 July 2011.

At the open meeting of Cabinet on 10 August 2011, Cllr. Hartley indicated (for the first time, as far as I am aware) in an answer to a question from Cllr. Anthony Clarke that he supported the Academy option. This was, of course, after the publication on 28 July 2011 of the Statutory Notice for the revocation of closure. Cllr. Hartley's comment was not a decision of the Cabinet or Council in accordance with the Constitution. In his answer Cllr. Hartley also stated 'At present the Department for Education have two applications to review, the Academy Application and the Sirius Wood Free School application. I am happy to wait on the Minister to decide which application should be successful.' Given the correspondence and other matters as referred to above and the terms of the Statutory Notice such a comment by Cllr. Hartley can only be described as disingenuous and deserving of contempt.

In an e-mail of 28 July 2011 I sent in response to an e-mail from Vernon Hitchman I advised that I had provided sufficient argument and information for the Council to realise it was not in a good place and that it should have sought a mutually acceptable way forward. (This would have been an agreement for review of the decision to consult by Policy Development and Scrutiny before publication of the Statutory Notice). However, it now appears that the Council had that day published a Statutory Notice which I only became aware of on release of the aforesaid FOI information from the DfE on 11 August 2011. i.e. Officers did not advise me of the publication of the statutory notice despite relevant correspondence. There were no press releases or advices to Councillors or schools - just the minimum required by legislation. It is also noted the consultation period was during the school summer break. Similarly no indication was given that the Secretary of State would be making his decision on 18 August 2011 i.e. during the statutory period for objection or consultation.

It is clear that the Cabinet's objective (and apparently also the DfE's) is / was for a decision to be made by the Secretary of State on 18 August 2011 (or perhaps rather for him to confirm what appears to have already been agreed before 14 July 2011) and:-

- i) before the consultation period for the Statutory Notice of Closure notice has concluded and objections and representations have properly been considered by the Council and indeed the DfE and
- ii) without any opportunity for appropriate scrutiny

I invite the Council and the DfE to reconsider their respective positions in the light of the foregoing:-

1. I believe the DfE should be asked to confirm that the Secretary of State will not be asked to make any decision on approval of either a sponsored Academy or a Free School until the Statutory Consultation period for the Revocation of Closure Notice has ended and the Council and the DfE have given appropriate consideration to any objections or representations which may be made.
2. I believe the Council should withdraw the Statutory Notice which was published on 28 July 2011 and issue another notice consistent with the decision it actually made on 14 July 2011 although it is difficult to see how this can now be done (or with any new decision it may make to prefer the option of a small Academy or otherwise) and without misleading / inaccurate content. Any decision including to publish such a revised notice should be available for call-in.

I do not believe there has been proper process on this or appropriate transparency. The Council and the DfE should now put things right (and are being given the opportunity so to do) rather than risk further escalation.

I would also note that we would not be in this position if the Cabinet's decision had been available for call-in as it should have been and as I had been so advised it would be by the Council's Monitoring Officer on 13 July 2011.

The Director of Children's Services wrote to me on 25 August 2011 and advised, in effect, that the Council did not intend to make a new decision and publish a revised statutory notice i.e. one that was made in accordance with a proper (and not an irrational decision) and did not contain misleading / untrue information. I responded to the Director's letter as follows in an e-mail on 30 August 2011:-

'I note the views of the Local Authority as set out in your letter but sadly consider them as irrational as the decisions made on 14 July 2011.

Without prejudice to the detailed comment in my letter of 15 August 2011 as supplemented on 22 August 2011 and by subsequent correspondence:-

1. The DfE should not be considering any proposal for a sponsored Academy until the Cabinet's determination of the revocation notice which is, in any event, flawed and needs to be reissued when the Cabinet makes a proper and rational decision if it is so capable.

2. I note your comment that the Cabinet's determination of the revocation notice may be able to be informed by the outcome of the DfE decision on the viability of an academy proposal. However, there is a valid closure in place and the DfE should not be making any decision until the Council determines the revocation notice. To do otherwise would be premature, prejudicial, and subject to challenge. I have commented in one of my recent e-mails about whether the Council should have been supporting an Academy application from Culverhay to the DfE - i.e. prior to any determination of the revocation notice - whether from a procedural basis and / or in the absence of a proper and rational Cabinet decision. I think that is a further consideration in terms of procedural impropriety to add to the long list already identified.

3. With regard to 'point 2', the Statutory Notice was not in accordance with the decision(s) made by Cabinet albeit the decisions were themselves irrational. i.e. the Statutory Notice has no validity. It was also misleading and includes a statement by the Council which is untrue but which clearly may affect / prejudice any party wishing to make an objection or representation. i.e. Having the Council state that an independent party has considered a small Academy to be viable might, for some, be appropriately reassuring. When that patently was not the case it undermines proper process and cannot be rectified except by reissuing the Statutory Notice after a proper decision.

It is also clear that there was disadvantage to Sirius Wood / the Free School by virtue of the decision to revoke closure and the references in the Statutory Notice, including in terms of consideration by DfE of their proposal where the site issue was specifically mentioned. There are also issues that affect other schools (including DSG funding) and the Council's budgetary position.'

As of 4 September 2011, the Secretary of State had not made a decision on an Academy and the Bath Chronicle reported on 1 September 2011 that the DfE had referred the issue 'back to B&NES asking for what local support there is for an Academy'. As indicated above there is no decision by Council or Cabinet properly made to support an Academy bid nor has there been appropriate information put in the public domain. I sent an e-mail on 1 September 2011 which contained the following comments inter alia:-

' 1. As the Council and Councillors, the Schools Forum and the B&NES public have not been advised as to what exactly is proposed in terms of an Academy, what it will do, and who it may involve (Cabot or otherwise), I am not sure how a proper response can be given to Government without an appropriately detailed paper going to Cabinet and / or Council and being available in the public domain. In this respect I

note that I learnt about Cabot's possible involvement by reading the Bath Chronicle and further that the Council was part of the Academy 'bid' by reading the Council's answers to questions raised by the Bath Chronicle! That is not how Council or Councillors should be advised or treated particularly when there are substantial educational and financial issues that should be properly considered for sound decision-making. I have commented separately questioning how the Council could be making such a bid with Culverhay given the current statutory position and its irrational decisions on 14 July.

So I am not sure how it can be possible for the Council to respond to the DfE early next week, if indeed that is what is planned, as to whether it has 'local support' whether specifically or in comparison to other options except on a similar basis to other decisions already made i.e. irrationally, unreasonably, without proper information and with procedural impropriety. *[Prospective Grounds for JR 24]*

In this respect I would also refer you to the comments made in other correspondence (including but not limited to my Objection and Representations Letter dated 15 August as supplemented on 22 August) regarding views of Schools Forum etc.'

Yours faithfully,

*Malcolm Hanney*

**Malcolm Hanney (Cllr.)  
Bath & NE Somerset Council**

cc The Right Honourable Michael Gove MP, Secretary of State for Education

---

## Free Schools correspondence

Dear - Sorry, one other thing I should have said. A maintained school cannot become a Free School, so I take it that means you are working with the Governing Body to pursue conversion to a sponsored academy.

Best wishes,

.....

Hi XXX - the proposal to revoke the closure notice will be reviewed at the Council & Cabinet meeting at 6.30 this evening - so they don't know yet, but have said they will e-mail me tomorrow. When Robert Back spoke, the official plan was to announce an intention to move to Academy status when the closure notices are withdrawn. But we can't be syre yet .....

Dear XXX - Sorry, one other thing I should have said. A maintained school cannot become a Free School, so I take it that means you are working with the Governing Body to pursue conversion to a sponsored academy.

-----Original Message-----

From:  
Sent: 20 July 2011 15:24  
To:  
Subject: RE: Culverhay School

Very helpful, many thanks .

-----Original Message-----

From:  
Sent: 20 July 2011 15:13  
To:  
Subject: Culverhay School

Dear

You rang last week and I agreed to provide an update following our Council/Cabinet meeting.

The full Council heard the 'call-in' of the decision to determine the public notice of closure of the school and resolved to refer the decision back to the cabinet (as the decision-maker) for re-consideration.

Cabinet then resolved that the original decision made by the previous administration should be changed, so that the school would not be closed.

Cabinet then considered the next steps it wished to take and resolved:-

to publish a notice of revocation to withdraw the closure decision;

that it wanted the school to become co-educational at the earliest opportunity and that it might do this as an academy or a Free School;

to instruct officers to work with the Governing Body, which has resolved to pursue conversion to a sponsored academy, to enable submission of a business plan/application at the earliest opportunity.

I trust this is helpful.

Regards

Ok - thanks, I'll let them know.

-----Original Message-----

From:  
Sent: 20 July 2011 15:44  
To:

Subject: RE: Culverhay School

Thanks

NB that as a maintained school cannot become a Free School this route is not available

Free Schools Group  
Infrastructure & Funding Directorate  
2nd Floor, Sanctuary Buildings  
Great Smith Street  
London SW1P 3BT

-----Original Message-----

From:

Sent: 20 July 2011 15:24

To:

Subject: RE: Culverhay School

Very helpful, many thanks.

For you might say

'The proposal was put together by a couple of members of its SMT when the low performing Culverhay School was under threat of closure and is for the FS to take over the site. However, following a change of political control the Council has changed its mind and has told the OSC that it will now wants Academy status for the school with a strong sponsor. The decision to withdraw the Culverhay closure notice was made formally at a [Council meeting on 14 July]. The FS proposal should not be progressed as the rationale for it was the planned Culverhay closure, and it is proposed that OSC should now agree an appropriate Academy solution for the school . '

Grateful if could confirm asap what the Council decides at tonight's meeting

Hi - the proposal to revoke the closure notice will be reviewed at the Council & Cabinet meeting at 6.30 this evening - so they don't know yet, but have said they will e-mail me tomorrow. When spoke, the official plan was to announce an intention to move to Academy status when the closure notices are withdrawn. But we can't be syre yet .....

---

**From:**

**Sent:** 05 July 2011 17:37

**To:**

**Cc: Subject:** RE: Action (6 July): Free School Applications 2012 - getting a more rounded view on them...

& I discussed this morning, and agreed no comment at this stage unless major issue to flag up, as we'll also have a chance to comment again later.

Do we need to add a comment on the FS app spreadsheet, just to make sure our joint meeting with OSC, FS and Academy Converters is on the radar (although FS were there and received latest update from )?

If needed could include comment to say OSC, Academy Converters, FS and SSID1 joint meeting on 21 June to discuss. OSC broker has checked latest position with DCS. The school will move to academy status, and a sponsor is being sought. The council are revoking the closure notice on 14 07 11 and are likely to announce academy ambition then.

**From:**

**Sent:** 30 June 2011 09:24

**To:**

**Subject:** FW: Action (6 July): Free School Applications 2012 - getting a more rounded view on them...

- Between you could you arrange to complete this on the shared drive, asking others in their team for any info as appropriate? The one that makes me twitchy is the proposal for the Culverhay site. assumed an Academy proposal would just take precedence, as the Free School would not have a site if Culverhay isn't closed. But I'm not so sure .....

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**From: Sent:** 29 June 2011 10:05

**To:**

**Subject:** FW: Action (6 July): Free School Applications 2012 - getting a more rounded view on them...

All

Can your people pls look at the attached and add comments onto the spreadsheet, which I have saved in the data folder in the SSID shared folder – can people who add comments pls put their name next to them so that knows who to follow up with. Deadline COP 5 July.

<b>Notes of Visit</b>		
<b>Date:</b> 04 07 11 <b>time:</b> 1200	<b>Location:</b> BaNES offices Keynsham	
<b>Purpose of visit::</b> Discuss Culverhay		
<b>List of Attendees:</b> XX OSC, XX DCS, XX HoSI, XX HoSI, Head Culverhay for part of the mtg		
<b>key discussion points and decisions</b>		
<p>BaNES is revoking closure notice and supporting academy option for Culverhay. LA will provide 700k for capital improvements to enable mixed intake</p> <p>RB explained process of moving to academy status for 2012. Need to seek approach which allows change of status to enable mixed intake. Likely that statutory closure route would best suit....but note sensitivity as it will imitate the recent closure process now to be revoked</p> <p>Discussion about imminent GB meeting to discuss and GB resolution. Advice given on approach to this.</p> <p>Discussion of potential sponsors...Cabot, AET, EACT. Cabot are in touch with school and LA</p> <p>Discussion of free School proposal which will not be viable if school remains open; some potential conflict with smt who have led the free school bid and are not supporting head.</p> <p>Dates agreed for visits and sponsor presentations...process of selection to complete on 25 07</p>		
<b>Key Action points</b>		
<b>Action</b>	<b>Who</b>	<b>When</b>
RB to contact potential sponsors		
MW to arrange all details of meetings visits etc and liaise with RB		

## Notes of Visit

### (End of Free Schools correspondence)

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For the attention of:  
The Secretary of State

Attached is the statutory notice for the proposal to revoke the notice to close Culverhay school, Bath as published on 28th July 2011.

Children's Services and School Organisation Manager,  
Children's Service Capital and Organisation Team,  
Bath and North East Somerset Council  
Phone: 01225 395169  
Mobile: 07980 998516  
Fax: 01225 394481  
Email:

Making Bath and North East Somerset an **even** better place to live work and visit.

#### PROPOSAL TO REVOKE THE NOTICE TO CLOSE CULVERHAY SCHOOL, BATH

NOTICE IS HEREBY GIVEN in accordance with regulation 26 of The School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007 that Bath and North East Somerset Council proposes to be relieved of the duty to implement the statutory proposal published on 16 December 2010.

This proposal was to discontinue Culverhay School, Rush Hill, Bath BA2 2QL, approved to come into effect from 31 August 2014.

The LEA proposes that it be relieved of its duty to implement the proposal because additional funding has been made available to make modifications to the school buildings, to support the school in addressing overstaffing and restructuring and to allow the school to pursue the option of the school becoming an academy and then becoming co-educational. An externally commissioned study has shown that a relatively small school with a pupil centred curriculum making use of flexibilities as an academy can be viable and therefore closure of the school is now inappropriate.

Within six weeks after the date of publication of this proposal,

any person may object to or make comments on the proposal by sending their representations to Children's Services Capital and Organisation Team, Bath and North East Somerset Council, Riverside, Temple Street, Keynsham, Bristol BS31 1LA.  
Date: 28 July 2011  
Signed: Ashley Ayre,  
Director of Children's Services

Many thanks - we are just finalising the wording for the decision notification now and will send this to the Unit this week.  
Best wishes,

Dear

Thank you for sending in the draft revocation notice for checking - it appears to meet all of the requirements. Our records are still showing the original proposal as 'awaiting decision'. Please can you forward us a copy of the decision on the school closure, so that when the revocation notice comes in we can update accordingly.

*My advice is offered without any real contextual knowledge of local circumstances. You will appreciate that my comments are offered in good faith but they cannot be taken as an authoritative statement of the law and it is for the proposer to ensure that published notices comply with statutory requirements.*

*If you created this draft on the Notice Builder tool, you should now return to the Notice Builder, edit your Notice, if appropriate, then select 'Finalise Notice', which will then link you to a template download to help you prepare your 'complete' proposal (as opposed to just the published part of the proposal).*

*May we remind you that within one week of publication, a copy of both the published and complete proposal should be sent to the persons stated in legislation relevant to the published proposal(s). For closure proposals, the LA should also submit a copy of their published proposals to the Governing Body, and the Governing Body to the LA, on the date of publication.*

*Copies of both the published and complete proposal (without consultation documents) should also be sent to the Department: via email: [school.organisationproposals@education.gsi.gov.uk](mailto:school.organisationproposals@education.gsi.gov.uk) or post: Department for Education, School Organisation & Competitions Unit, 2F Area D, Mowden Hall, Darlington DL3 9BG or - Special School Notices should be sent via email: [specialschool.reorganisation@education.gsi.gov.uk](mailto:specialschool.reorganisation@education.gsi.gov.uk) or post: Department for Education, SEN, GF Area B, Mowden Hall, Darlington DL3 9BG, and in due course, details (including the date) of any subsequent decisions or modifications made and/or of conditions set/met.*

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**From:** @BATHNES.GOV.UK]  
**Sent:** 11 July 2011 10:28  
**To:** ORGANISATIONPROPOSALS, School  
**Subject:** Revocation Statutory Notice for Approval

Attached is a draft statutory notice for the proposal to revoke the notice to close Culverhay School, Bath. Please could you let me know if this is OK for publication. The notice needs to be sent to the printer on Friday 15th July to be typeset.  
Best wishes and many thanks,

Children's Services and School Organisation Manager,  
Children's Service Capital and Organisation Team,  
Bath and North East Somerset Council  
Phone: 01225 395169  
Mobile: 07980 998516  
Fax: 01225 394481  
Email:

## **Proposal to revoke the notice to close Culverhay School, Bath**

Notice is given in accordance with regulation 26 of The School Organisation (Establishment and Discontinuance of Schools)(England) Regulations 2007 that Bath and North East Somerset Council proposes to be relieved of the duty to implement the statutory proposal published on 16 December 2010.

This proposal was to discontinue Culverhay School, Rush Hill, Bath, BA2 2QL, approved to come into effect from 31 August 2014.

The LEA propose that a duty to implement the proposal should not apply because following local government elections, additional funding has been made available to make modifications to the school buildings, to support the school in addressing overstaffing and restructuring and most importantly to pursue the school becoming an academy. In addition, an externally commissioned study has shown that a relatively small school with a pupil centred curriculum making use of flexibilities as an Academy can be viable and therefore closure of the school is now inappropriate.

Within six weeks after the date of publication of this proposal, any person may object to or make comments on the proposal by sending their representations to Children's Services Capital and Organisation Team, Bath and North East Somerset Council, Riverside, Temple Street, Keynsham, Bristol, BS31 1LA.

Signed: Ashley Ayre, Director of Children's Services

Date: 21 July 2011

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(2)

**From:** Anne\_Hewett@BATHNES.GOV.UK  
**To:** Richard\_Morgan@BATHNES.GOV.UK, Mchanney1@aol.com  
**Sent:** 18/08/2011 10:07:30 GMT Daylight Time  
**Subj:** RE: School Forum - Culverhay Letter

I am aware of the pain caused in closing a school, but I write in support of the original decision to

close the school. There are other schools in Bath that could accommodate these pupils. While Culverhay will have unique and wonderful ways of meeting its pupils' needs, they are in a city and so pupils can travel more easily to alternative schools.

It concerns me when I see U turns; I fear that new people coming in will only see a few sides of the problem which has been there for many years; there are no quick fix solutions to what is a complex issue.

There are many rural schools with fragile budgets, and I fear that keeping Culverhay open will have more repercussions than most of us will realise, especially as many heads will currently be away on holiday and this email may pass them by.

Anne Hewett  
Head teacher  
Farmborough Church School

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(3)



*'Achieving excellence through the pursuit of good'*

Headteacher:  
Mr. K. Burnett B.A.(Hons)  
Deputy Headteacher:  
Mrs. J. Bradley B.Ed.

Bathwick St. Mary Church of England Primary School  
Darlington Road  
BATH  
BA2 6NN

Tel: 01225 465654  
Fax: 01225 484289/465654  
E-mail: [bathwickstmary\\_pri@bathnes.gov.uk](mailto:bathwickstmary_pri@bathnes.gov.uk)  
School web site: [www.bathwick-st-mary.bathnes.sch.uk](http://www.bathwick-st-mary.bathnes.sch.uk)

18<sup>th</sup> August 2011

M Hannay (Cllr.)  
Magna House  
Battle Lane  
Chew Magna  
Bristol  
BS40 8PX



Dear Malcolm,

Thank you for your letter to the Schools' Forum which I received by email today.

From information received through my membership of the Schools' Forum and other sources throughout the long process of consultation on Bath Secondary provision, it seems that you have summed up the current arguments for closure and the Council's choices in a very helpful way. If there are other reasons that have not been divulged, then the Council needs to make these clear.

Schools' Forum should be about the provision of funding to achieve the best possible educational outcomes for each child in every school in Bath & NE Somerset. Where the Council wishes through political reasons to make decisions that affect this position, then the Council and

not the schools should be accountable and liable to pay – both electorally and financially for its choices. For example, the recent decision over school meal prices.

The information you seem to have (and referred to in your letter) should be once again put to the Council in its deliberations and, as a Forum member, I believe you have highlighted all the reasons why the Forum had supported the original decision to close Culverhay.

Yours sincerely,

*Kevin Burnett*

(via e-mail)

Kevin Burnett  
Head Teacher

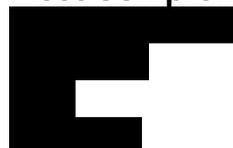


This document can be made available in a range of languages, large print, Braille, on tape, electronic and other accessible formats from:

The School Secretary Tel. 01225 465654 or e-mail [bathwickstmary\\_pri@bathnes.gov.uk](mailto:bathwickstmary_pri@bathnes.gov.uk)

(4)

Fleet Comprehensive



Tel:

Email:

Dear Councillor

On Friday, as part of the process through to sign off by the Secretary of State, the Sirius Wood Free School group met with the Department for Education to discuss their proposal to open Sirius Wood.

The DfE panel was impressed by the proposal; not all proposals reached this stage. The panel was particularly impressed by the community aspect of the proposal and the ability to deliver on pupil outcomes. They liked the 51 week a year provision, the extended school day and recognised the financial strength and value for money of the proposal as well as the capacity of the steering group to deliver the project.

As a member of the Schools Cooperative Society, Sirius Wood Free School will operate a co-operative model of governance. What this means is that in addition to the governing body a community forum will

be elected. Any member of the community, including elected representatives, can be a member and therefore be elected to the forum and have a voice in the future of education in the south west of Bath, unlike a sponsored academy that will dictate policy and practice. This is in addition to the community representation on the governing body.

The issue the DFE had however was whether the site would be available, possibly in view of recent discussion with regard to the alternative proposal of a sponsored academy.

We have been promised by the Liberal Democrat leadership that, should the Free School proposal gain approval from the Secretary of State the site would be made available to us. We have also been advised that it is only the fact that the community has engaged in this initiative, and that the Free School proposal has been on the table, which has resulted in a position where the Liberal Democrat administration can actually make good on their election promise to ensure a co-educational school is opened in the south west of Bath.

We are therefore asking you to press the leadership of the council for re-confirmation of the following: Firstly, are the promises and assurances we have been given with regard to availability of the site to the Free School accurate; secondly, in the event of a positive decision by the Secretary of State, the agreement by the Liberal Democrat leadership to make the Culverhay estate available to the Free School will be honoured, regardless of any other proposal on the table subsequent to the endeavour initiated by the Free School group.

This is an opportunity to make a difference not just a decision. This is an opportunity to change communities, not just open a school. Please support us by asking the leadership what their actual position is and by ensuring they meet their promise and ensure a fair and open process. Sirius Wood Free School has all the financial advantages of an academy but retains local accountability and engagement; responds to local need and above all focuses on outstanding education.  
Yours faithfully

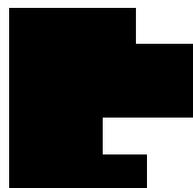
The Sirius Wood free School Steering Group

Registered in England. No: 07492056  
Registered address  
44 Kelston View, Whiteway, Bath, BA2 1NP

---

(5)

Malcolm Hanney  
Battle Lane  
Chew Magna  
Bristol  
BS40 8PX



04/09/11

Dear Malcolm,

**Culverhay School**

Thank you very much for your letter of 12<sup>th</sup> August. As you rightly say the statutory notice relating to Culverhay School has not been widely publicised and its timing at the start of the

schools' summer holidays is particularly unfortunate. As all B&NES schools will be directly affected by the Council's decision not to close Culverhay School I am surprised that the schools were not advised directly of the notice and period for consultation.

In my view the decision not to close Culverhay School is most regrettable. The problem of surplus secondary school places in B&NES needs to be addressed urgently. With the advent of academy schools this may be B&NES's last opportunity to do so. As you rightly say any money that is used to fund surplus places is money that could and should be used to fund the education of all pupils in B&NES. The failure to take advantage of the economies of scale that would be achieved by closing Culverhay School will be to the detriment of the education of all pupils in the authority.

The Cabinet paper "To assess the options for the future of Culverhay School" does not discuss the potential financial benefit to other B&NES schools that could be achieved by closing Culverhay School. I asked Richard Morgan what the increase in the AWPUs for all B&NES secondary school pupils would be if the savings achieved by the closure of Culverhay School were redistributed through the AWPUs funding. Richard estimates that this would equate to £45 - £50 per pupil, a fairly significant amount of money for every secondary school. The other Bath schools would also benefit from the nearly £1M that would follow the Culverhay pupils those schools. As the incremental costs of additional pupils are relatively small, this money would be of enormous benefit.

Should Culverhay School be closed its capital value could be realised and the income could be used to fund the improvement of school facilities across B&NES. The site, or parts of it, could be used to provide brownfield sites for employment and/or housing. If the school is to be retained additional capital expenditure will be required.

The Cabinet paper points out that, with the advent of Academy Schools, the Council's ability to address the number of surplus secondary school places is becoming limited. It is most regrettable therefore that what is probably its last opportunity to do so is being wasted. The potential benefit to all B&NES schools, but especially those in Bath, is enormous. The benefits of retaining Culverhay School are intangible to say the least. Culverhay School, because of its low pupil numbers, is already limited in its offer to pupils both pre and post 16. The school is clearly not popular and bigger schools have more to offer. With academy schools able to increase their pupil numbers the risks of declining numbers on roll are high but difficult to quantify. The schools future viability apparently depends on a major change in curriculum and being able to retain or increase pupil numbers. Any increase in pupil numbers will be to the detriment of other Bath schools.

Keeping Culverhay School open perpetuates the problem of surplus secondary school places and the consequent waste of money. Other B&NES schools will be deprived of additional resources that would be of significant benefit to the education of all B&NES pupils. There is a significant danger that even with the planned changes there will be a continued drift of pupils to bigger, more popular and more successful schools and that Culverhay will need to be closed in a few years time. Whilst the school might be kept open by ever increasing subsidies from the DSG, robbing other schools, the advent of a national funding formula will almost mean the school will close.

The Cabinet does not appear to have fully considered the substantial potential benefits to other B&NES schools and all B&NES pupils. Neither does it appear to have considered the risks of eventual closure due to migration of pupils to other schools and the likely impact of a national

funding formula. Mark Mallett and I will work with other members of the governing body to prepare a letter strongly objecting to the revocation of the decision to close Culverhay School.

Yours sincerely,

Brian.

Brian Wibberley  
Chair of Governors  
Chew Valley School

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(6)

Dear Ashley, I am writing to you in my capacity as outgoing Chair of Governors at Ralph Allen School (although I will remain a governor and take up a vice chair position).

During last year's consultation for the secondary review I wrote to Mike Bowden expressing my concern (widely shared by colleagues across Bath) that the council was considering an application to retain Culverhay School. It appears now that, in spite of the facts, and at a time of severe financial constraints on public bodies, the council is again considering this course of action. It is clear from published documents that this is absolutely contrary to sound financial and school place planning considerations. Why on earth would the council chose to consider this application in these circumstances? Notwithstanding the negative impact on the DSG and wider school funding in BaNES, such a decision will call into question the ability of council to make reasoned and informed decisions, based on the facts. In that event, it will surely erode trust between the council and key leaders in education across the Authority at a time when collaboration and partnership are absolutely vital if we are to meet the challenges facing us. I urge you to do all you can to promote informed, vigorous and visible opposition to this plan; indeed, I believe it is our duty to do so. I would be grateful if you would forward this note to the portfolio holder.

Regards,  
Matt

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(7)

I would like to object to the revoking of the closure notice of Culverhay School. We had fought long and hard for a co-educational COMMUNITY school on the Culverhay site, however, the Council Officers and Councillors have made a preference of Cabot to replace Culverhay School with a Sponsored Academy, without any evidence of what community involvement (if any) there will be.

No consultation or surveys have been carried out with the communities in the South West of the City as to whether they want a Sponsored Academy and no evidence that the Sponsored Academy will provide a COMMUNITY School for the residents of the South West of Bath.

If a Sponsored Academy is opened on the site, this could mean the land lost to a company from Bristol for ever.

Regards



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(8)



6<sup>th</sup> September 2011



**Ralph Allen School**

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**Submission to Council from Libby Lee, Headteacher Ralph Allen School  
and Chair of School's Forum, on behalf of School's Forum**

Re: Revocation of Closure of Culverhay School

1. The Process

We are disappointed that the process has been so hurried through as to allow only a limited period during which representation can be made, this period covering the school's summer break and ending 6<sup>th</sup> September. It would be the preference of Forum that such an important issue for the whole school system should be subject to a consultation period allowing the voices of School Leaders and Governors.

2. The Issue of revocation of closure

School's Forum 5<sup>th</sup> July attended by councillor Nathan Hartley has been minuted, but the minutes do not fully reflect the extensive questioning that was put to Mr Hartley from Headteachers and Governors and the genuine bewilderment expressed from all School Leaders about the poverty of arguments for keeping Culverhay open.

Council have for some time been in receipt of robust data in relation to the financial impact of keeping Culverhay open and will be aware of the poor standards and difficulty in sustaining a full educational offer there. We were told that the council had commissioned ASCL to report on the

viability of keeping a small school open on that site. We were also told that money would be drawn down from the council budget to support Culverhay's estate.

We are in shock and disbelief that the current administration have so emotively attached themselves to the single issue of keeping Culverhay open without any seeming regard for the implications on the wider school system, which is drained of resources and facing a crumbling and inefficient estate, apart from limited examples such as Writhlington; Threeways or St Kenya.

It was also pointed out by Mr Hartley that until 2020 we would not really know if the system can sustain Culverhay remaining open and co-educational. Money will be put into the school, then be potentially taken over by an Academy or Free School, which will then be in the form of a gamble placed upon all schools, with at least one school likely to fail during that time. This decision seems irresponsible in monetary and human terms to say the least.

It was apparent at the meeting that the decision to keep Culverhay open was based on some very flimsy arguments. Mr Hartley argued that parents had been put off sending young people to the school because it was not co-educational. Yet we have successful single sex schooling in the city that the council are happy to keep, and additional co-educational capacity at Oldfield in September 2012. He also argued that the Liberal democrats were proud to be reversing a decision made by the Conservatives which was bordering on immoral. This argument seems politically fuelled and not based on the reality of too many school places that faces us now and in the future.

School leaders began to ask at the meeting why money could not be found in council budgets for other important school developments. The question of the small school subsidy was also raised.

These questions highlight the recklessness of making this decision in this way. We strongly urge The Liberal Democrats to refine their thinking to include some stronger arguments for the whole. At present it appears that dubious arguments are being stacked up to support a decision made in haste and in the interests of pleasing a small interest group in the electorate. All of us inherit the consequences of this decision, not just one localised community.

Yours sincerely



Libby Lee

**Headteacher of Ralph Allen School & Chair of B&NES School's Forum**



# CHEW VALLEY SCHOOL

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Mr A Ayre  
Director of Children's Services  
Bath & North East Somerset Council  
Riverside  
Temple Street  
Keynsham  
Bristol  
BS31 1LA

06 September 2011

Dear Ashley,

## **CALL-IN OF CABINET DECISION E2233 - "DETERMINATION OF THE STATUTORY NOTICE TO CLOSE CULVERHAY SCHOOL" - Bath & North East Somerset Council**

After consultation with the governors of Chew Valley School I am writing on their behalf to object to the proposal to revoke the notice to close Culverhay School. The Council has been seeking to reduce the number of excess places at secondary schools, and the consequent waste of resources, for a number of years. It is widely acknowledged that the Council's ability to limit the number of secondary school places is becoming increasingly limited with the advent of Foundation and Academy schools which can set their own admission numbers. It is regrettable that the Council appears to be wasting what is possibly its last opportunity to reduce surplus places.

The Governors of Chew Valley School believe the decision to retain Culverhay School is wrong for three main reasons.

- The potential financial and educational benefits to all other schools in B&NES that may be achieved by closing Culverhay do not appear to have been properly considered. Similarly the financial risks to other schools, particularly in Bath, of the decision to retain Culverhay also appear not to have been considered. The Cabinet paper relating to the future of Culverhay School contained no quantitative financial information on the impacts on other schools.
- Cabinet's decision to retain Culverhay School relies heavily on the Interim Independent Report by David Snashall. We believe that there are severe risks that Culverhay School will fail to survive due to failure to achieve the essential changes detailed in the report, failure to attract sufficient pupils against strong competition from academy and foundation schools, the introduction of a National Funding Formula making the school non-viable and closure by the DFE due to the school failing to achieve the Government floor targets for 5 A\* to C at GCSE. (40% for 2012 versus 31%

achieved by Culverhay in 2011). No evidence is provided that the pupil's education will benefit from keeping Culverhay open.

- The potential benefits both to other schools and to the community of the release of the Culverhay site do not appear to have been properly considered. Funds from the sale of part of the site could be used to provide better community facilities with the balance being used to improve other B&NES school buildings. Instead the Council is proposing to spend £900,000 over 10 years improving the existing buildings and providing female toilets, money that will be wasted if the school fails.

#### 1. Financial Impact on other schools.

The estimated saving of closing Culverhay School is estimated at £530,000 based on 2011/12 budgets. If this money were to be redistributed to all secondary schools through the AWPU allocation it would equate to £45 - £50 per pupil, a significant amount of money for schools with several hundred pupils. In addition there would be another £968,000 which would follow the pupils to other Bath schools. As the incremental costs for additional pupils are relatively small this money would be of enormous benefit to these schools and the education of their pupils including those transferred from Culverhay.

If Culverhay School is kept open other schools will be deprived of these extra funds and their pupils deprived of the educational benefits these funds will provide. In addition, for Culverhay School to survive, it will need to attract pupils from other Bath schools. These schools will lose the full funding for each pupil with relatively little reduction in costs to the detriment of the education of the remaining pupils.

These factors are of even more significance for school sixth forms. Small sixth forms will be very limited in the courses and subject combinations they are able to offer. Conversely by reducing the total number of school sixth forms, the increased pupil numbers will improve their financial viability and potentially allow the offer of a wider range of courses.

#### 2. Risks to the survival of Culverhay School.

David Snashalls Interim Report states that *"Assuming fixed costs do not create too big a proportion, there is no reason a school running at 50 – 60 students per year should not be sustainable providing the funding and staffing allocation guidelines formulae are followed. However, it would be virtually impossible to do this with a conventional staffing and curriculum structure, or traditional curriculum delivery."* This is far from a guarantee and the report is qualified with the need to gather more data. In order for Culverhay to become sustainable the report states that the school must make a number of significant changes. Non-staff costs must remain at around 20% of income in spite of income likely to be 30% lower than at present. This will not be easy to achieve. Staff numbers and management costs must be drastically reduced, a completely new teaching style and curriculum structure must be introduced, most teaching staff will need to be capable of enabling multiple subjects and the school must become coeducational and attract pupils from other schools. None of the above will be easy and the transition is likely to be difficult for both staff and pupils. Even so the report concludes that *"Action on the above points does not necessarily mean that the school will remain viable with a sustainable future when a national funding formula is introduced."* It should also be noted that this is an interim report. David Snashall flagged 8 of the 14 paragraphs as areas as needing further work. In section 4, Financial Risks, of the Cabinet Paper even in the more optimistic Scenario 2 with intake numbers rising to 80 the school is still predicted to have an in year deficit of £23,139 in 2015/16 with a cumulative deficit of £747,831. This

is hardly a demonstration of sustainability. How is this deficit to be funded? David Snashall reported that the LA & School data on pupil numbers “may be at the higher end of expectations.” For Culverhay to achieve an intake of 80 pupils per annum would mean other Bath schools would lose around 50 pupils and well over £100,000 per annum.

At 31% this year for the 5\*A-C measure Culverhay is well below next year’s floor of 40%. To move from 31% to 40% is a huge jump for any school. For one undergoing the changes listed above it is nigh on impossible.

3. The value of the Culverhay site has been estimated at around £6 – 8million. Very little analysis appears to have been done on the potential benefits to both schools and the community of realising this asset. Part, or all, of the site could be sold for housing, employment uses or both. The monies raised could be used both to provide improved community facilities and improve other school buildings in B&NES. To spend more money on under-utilised buildings which might still need to close in a relatively short time seems a very poor use of resources and a golden opportunity could be wasted.

The Governors of Chew Valley School request that the Council give further consideration to the decision to revoke the decision to close Culverhay School. We do not believe that sufficient consideration has been given to the potential financial benefits to all other B&NES schools and the education of their pupils, or the financial impact the expansion of Culverhay’s intake would have on other Bath schools. Based on the financial modelling and on the interim report, Culverhay school is most unlikely to be sustainable and we have seen no evidence that keeping the school open would be in the best interests of pupils. The potential benefits of realising the value of the site to all B&NES schools, and the immediate community, should also be considered.

Yours sincerely,

Brian Wibberley  
Chair of Governors  
Chew Valley School  
cc.  
Chris Kavanagh (Schools Capital & Organisation)  
Col Spring (Democratic Services)  
Cllr Malcolm Hanney  
Chew Valley School Governors



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