

Scottish Parliament Region: Highlands and Islands

Case 200600622: The Highland Council

Summary of Investigation

Category

Local government: Education

Overview

The complainant (Mr C) raised his concerns that the consultation process used by the Highland Council (the Council) when deciding to close a primary school in the Council's area (Primary School 1) was inappropriate. Mr C considered this led to a flawed decision to close the school.

Specific complaint and conclusion

The complaint which has been investigated is that the Council did not follow the correct procedures when carrying out the consultation into the options for the future of Primary School 1 (*not upheld*).

Redress and recommendation

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. On 6 June 2006 the Ombudsman received a complaint from a gentleman (Mr C) against The Highland Council (the Council). Mr C complained that the Council had not followed the correct procedures when carrying out their statutory consultation into the options for the future of the local primary school (Primary School 1). Mr C initially formally raised his complaint with the Council in writing on 24 April 2006 and received the Council's response on 8 May 2006. As he remained dissatisfied with the Council's response he asked our office to investigate his concerns.

2. The complaint from Mr C which I have investigated is that the Council did not follow the correct procedures when carrying out the consultation into the options for the future of Primary School 1.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation from both Mr C and the Council. I have also reviewed procedural documentation and guidelines in respect of the statutory framework for public consultations.

4. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

Background

5. Circular No 2/2004 issued by the Scottish Executive¹ Education Department on 30 September 2004 (the Circular) contained guidance on local authority proposals for the school estate, including school closures. When an authority proposes to change existing school provision in any of various ways, including closing, merging or changing the site or catchment area of a school, they are required by the Education (Publication and Consultation Etc)(Scotland) Regulations 1981 (the Regulations) to publicise their proposal, consult parents

¹ On 3 September 2007 Scottish Ministers formally adopted the title Scottish Government to replace the term Scottish Executive. The latter term is used in this report as it applied at the time of the events to which the report relates.

and school boards affected and to allow them and other interested parties a minimum 28 day period to make their views known to the authority.

6. In late 2004 informal consultation took place in two communities in the Council's area (Village 1) and (Village 2) on the future provision of local primary schooling. The purpose of these discussions was to outline the Council's views on what factors may affect future provision in the two communities.

7. The principal factors considered were:

- The roll projections at both schools.
- The roll trends at both schools.
- The condition of the two school buildings.

8. On 20 January 2005 the Education, Culture and Sport Committee (the Committee) of the Council agreed that, because of the condition of the existing buildings and the declining school role, a consultation process should commence on the closure and amalgamation of both schools.

9. In line with the earlier decision to review education provision in Village 1 and Village 2 the Council members of the area committee agreed the terms of the statutory consultation at their meeting on 28 February 2005.

10. A consultation paper was prepared which outlined the three possible options for consultation:

- Option A - The status quo. (They went on to define the status quo as retaining both schools and carrying out the necessary improvements to bring them up to an acceptable standard.)
- Option B - Amalgamate Primary School 1 and another primary school (Primary School 2) and build a new school on the existing Primary School 2 site.
- Option C - Amalgamate Primary School 1 and Primary School 2 and build a new school on a new site yet to be identified within the delineated areas presently covered by the two schools.

11. The consultation paper highlighted that officers favoured options B and C and that these were being proposed.

12. The Council have stated that the consultation was prepared in line with the Council's agreed procedure to meet the statutory requirements set out in the Regulations.

13. Two formal consultation meetings were held, one in Village 1 on 18 April 2005 and one in Village 2 on 19 April 2005. Formal records were kept of these meetings.

14. After the statutory consultation process it was considered that there were still issues of concern which remained outstanding. To try and address these a further meeting was held with community representatives on 7 June 2005. This meeting provided for further discussion as well as consideration of the merits of possible sites for a new school.

15. The report detailed the results of the formal consultation and specifically mentioned the clear views of the Village 1 community. In the report it stated the significant number of submissions from residents of Village 1 against the amalgamation of the two schools. The residents of Village 2 were, in general, in support of the proposals. This information was considered by the Committee and a decision was made to support officers' recommendations to amalgamate the two schools with a new school to be built on a yet to be specified site. It was, however, agreed to use the Village 2 site as a base line for comparison of the options.

16. The report to this Committee highlighted the very strong feeling in Village 1 against amalgamation of the schools. There was a view by the residents that any new school was likely to be located in Village 2 and that Village 1 would, therefore, lose their school. As a result of this, from the 457 written responses to the consultation from Village 1 residents, all 457 were against the amalgamation. They all wanted a school retained in Village 1.

17. Following this decision of the Committee to amalgamate the schools, an appraisal of 12 site options was carried out. From this appraisal two options were identified for the site of an amalgamated school, that of the existing Primary School 2 and an alternative site in Village 2. To comply with their obligations relating to consultation, the Council carried out a further consultation exercise and a public meeting to discuss the two options was held on 12 June 2006.

18. The outcome of this statutory consultation process was considered by the Committee on 10 August 2006 where a decision by Committee members was made to build the new amalgamated school on the site of the current Primary School 2.

19. During the consultation process on the proposals for provision in Village 2 and Village 1 the then Director of Education, Culture and Sport had reservations regarding road safety issues. It was confirmed that these would be considered in detail and in line with a transport impact analysis which would form part of the planning consent.

Complaint: The Council did not follow the correct procedures when carrying out the consultation into the options for the future of Primary School 1

20. Mr C raised a number of concerns about the Council's actions in respect of the consultation. He considered that:

- the consultation carried out by the Council did not comply with the Circular;
- the Council failed to follow their own guidance on the means of consultation;
- the Council have, throughout the whole process, stated that the status quo was not an option;
- the Council did not give sufficient consideration to the option of retaining both schools;
- the Council's use of the phrase 'taking into account the Primary School 2 site as a base line comparator' did not make sense and may have confused Councillors; and
- although the issue of safe transport was discussed, no decisions were made about the provision of safe school transport between Village 1 and Village 2.

21. Mr C has stated to our office that he considers that the consultation carried out by the Council did not comply with the Circular. In particular he considers that they failed to adhere to the guidance detailed in paragraph 31 of the Circular where it stated that 'Consultation is the key to the whole process'.

22. He also considered that the Council failed to follow their own guidance on the means of consultation. Mr C, for example, stated that in the Council's own management plan of 31 December 2003 the Council detail in paragraph 6.2.3 that various options must be considered and that 'do nothing' and 'do minimum'

should be included as options. Mr C argued that because the Council had previously decided to rebuild the School, that should have been the status quo option in the consultation, and in fact this option was not consulted on at all. He went on to state that the analysis and the options and ranking of the benefit criteria should take place in consultation with stakeholders. Stakeholders, as detailed in paragraph 2.8.2 he stated, include elected members, Head Teachers, parents the public and occasional users.

23. Mr C stated that, throughout the whole process and particularly immediately prior to the final decision on whether to close Primary School 1 was made, it was constantly stated that 'the status quo is not an option'. Mr C considered that this was in clear breach of the Council's Management Plan and was misleading to members of the final meeting. He considered that this could only have resulted in a flawed decision being made.

24. Mr C also questioned some of the options provided. He was concerned that it appeared that the benefits, or otherwise, of retaining both schools compared with the amalgamation was never properly considered.

25. Mr C also mentioned that the phrase 'taking into account Primary School 2 site as a base line comparator', used by the Council when comparing alternative sites, made no sense and was likely to have confused Committee members. He raised his concerns that an earlier plan by the Council to build a new school in Village 1 was never rescinded.

26. Finally Mr C stated that, although the issue of safe transport was discussed, no decisions were ever made to Committee about the provision of safe school transport between Village 1 and Village 2.

27. Before progressing my examination of the evidence I contacted the Council to request details of the procedures they followed when considering the options for primary school provision in the area and also requested details of the framework within which they operated.

28. The Council stated that they have procedures for reviewing educational provision. These were produced in September 2003 and consist of a set of principles, practices and criteria to be followed by the Council when reviewing education provision. In addition the Council have provided guidance on their

responsibilities to ensure compliance with the Regulations. I have reviewed both documents.

29. The consultation paper produced by the Council in March 2005 detailed that there were three options open for consideration. Those of maintaining the status quo (by which they meant retaining both schools and carrying out works to bring both schools up to a suitable standard), the amalgamation of both schools with a new school on the existing Primary School 2 site or the amalgamation of both schools with a new school built on a new site yet to be identified.

30. The option of building a new school at the Primary School 1 site which had been considered a few years before was not included as an option in the consultation as it was not deemed a practical solution by officers.

31. The 'status quo' was not the favoured option of Council officers because of the poor condition of the existing buildings especially at Primary School 1. They suggested that the option of 'doing the minimum' would not resolve the issue of the continuing falling school rolls and would, in the opinion of officers, not have provided the best facilities for pupils.

32. At their meeting of 11 August 2005, members of the Committee agreed to approve the amalgamation of both schools on a site yet to be determined, taking into account the Primary School 2 site as a base line comparator. Mr C has suggested that this phrase was unclear and could potentially confuse Councillors. I do not intend to pursue this point as Councillors were able to request clarification if they considered it was required.

33. The Council have advised me that the question of safe school transport has been highlighted and considered. The report to the Committee of 10 August 2006 details that guarantees have been given about having a full traffic assessment once the site for the new amalgamated school was confirmed. It further detailed that school transport would be provided until all the appropriate recommendations to improve the route had been addressed, wherever the new amalgamated school was built.

34. The Council have responded to me directly that school transport provision would be considered in line with a traffic impact analysis which would form part of the planning process.

Conclusion

35. The Council operated its own procedures to ensure compliance with their statutory obligations as laid down in the Regulations. I have reviewed these procedures and consider that they do comply with their statutory requirements.

36. The procedure detailed that officers would present options to the Committee who would then decide which were the most suitable to go forward to consultation. It should be remembered that a consultation process is followed to seek local views on proposals being tabled. Ultimately, however, it is for the elected members to make a decision based on the information provided by officers. Although I agree that not all the possible options were considered at the public consultations, I do not consider that this is a requirement of the legislation.

37. Although I did not examine the financial aspects of the various options, it is clear from the evidence they have provided, that the Council did give due consideration to the benefits of amalgamating the schools against retaining the existing structures. It is clear from early on in the process that a new build school to replace both existing schools was considered the best option by officers. This view was scrutinised at all stages by Committee members. Public consultation is a central aspect of the process followed by the Council. Consultation is, however, only part of the process, the Council must take account of views given during the consultation but, ultimately it is for the elected members to make decisions.

38. I have reviewed the statutory framework for the public consultation process as laid out in the Regulations and the guidance on the school estate and school closures as detailed in the Circular. In addition, I have reviewed the Council's own guidance. From my review of the information available I do not consider that there is sufficient evidence to support Mr C's view that the consultation process did not comply with the local and national requirements and that, as a result, it produced a flawed decision. I consider that a clear process was followed which provided for options to be presented for consultation, and later, consideration by Committee. At all stages of this process I consider that the alternative options were made clear to Committee members to allow them to make the appropriate recommendations.

39. I fully accept that the decision to amalgamate Primary School 1 and Primary School 2 on the site of the existing Primary School 2 was unpopular in the Village 1 area. Despite this, I consider that the Council did comply with their statutory and procedural responsibilities when considering the options for the two schools. As a result of this, I am unable to uphold the complaint.

Recommendation

40. The Ombudsman has no recommendation to make.

Explanation of abbreviations used

Mr C	The complainant
The Council	The Highland Council
Primary School 1	One of the primary schools mentioned in the consultation
The Circular	Scottish Executive Education Department Circular No 2/2004
The Regulations	Education (Publication and Consultation Etc)(Scotland) Regulations 1981
Village 1	One of the communities consulted in the consultation process
Village 2	One of the communities consulted in the consultation process
The Committee	The Education, Culture and Sport Committee
Primary School 2	One of the primary schools mentioned in the consultation

List of legislation and policies considered

Circular No 2/2004 issued by the Scottish Executive Education Department

Education (Publication and Consultation Etc)(Scotland) Regulations 1981

The Council's procedures for reviewing educational provision produced in September 2003

The Council's guidance on their responsibilities to ensure compliance with the Regulations