Council's Judicial Review Fails: Court Upholds Academy Conversion Decision

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A recent court decision reinforces the Secretary of State's power to order Academy conversions and highlights the high threshold a council must meet to overturn such decisions.

Islington Borough Council (the 'Council') had been grappling with falling pupil numbers due to changing demographics. A decline in birth rates, reduced EU migration, and families moving out of Central London had contributed to a significant reduction in demand for school places across many London boroughs. Maintained schools are funded on a "per pupil" basis, so operating below capacity leads to financial deficits which can affect the quality of education.

While the Council was devising a plan to deal with the surplus places across its schools, Poole Park Primary School was inspected by OFSTED and assessed as "inadequate". This rating triggered the Secretary of State for Education's (SSE) statutory duty to issue an Academy Order under section 4 (A1) of the Academies Act 2010 (the 'Act'). An Academy Order requires a school to start the process of converting into an academy, sponsored by a trust or multi-academy trust (MAT). Once converted into an academy, the school is outside of the local authority's control.

Several MATs showed interest in sponsoring the school and the SSE selected a MAT experienced in providing education for students with complex special needs in both mainstream and special schools. The MAT had an innovative plan to share resources with its other schools and increase pupil numbers.

The Council wished to close the school and invited the SSE to revoke the order. Although the SSE has the discretionary power to revoke an academy order under section 5D of the Act this is reserved for 'exceptional circumstances' which are set out in the guidance. One example of exceptional circumstances is if a school is judged not to be viable as an academy.

The Council brought judicial review proceedings against the SSE arguing that the decision the school was viable as an academy was irrational because relevant financial modelling material had not been properly considered during the decision-making process.

Clearly, there will be a significant element of judgment involved in assessing viability, as this evaluation relies on predicting potential outcomes following academisation. However, judicial review focuses on the legality and reasonableness of the decision-making process rather than substituting the court's opinion for that of the decision-maker.

The court found no legal flaw in the SSE's reasoning, upholding the decision not to revoke the Academy Order. The Council then sought permission to appeal that decision. On appeal, the Court of Appeal reaffirmed the lower court's ruling, stating that the SSE's decision could only be deemed irrational if she lacked sufficient information or

overlooked a crucial factor; but that the SSE had been provided with the salient facts and was not required to examine the MAT's financial modelling in greater detail. Since neither condition was met, the Court of Appeal dismissed the appeal stating that the overriding objective was best served by putting an end to the "deleterious effect on the school of continuing uncertainty".

Each case must be assessed on its own unique facts, but one point is clear: the statutory obligation to issue an Academy Order following an "inadequate" OFSTED rating, and the limited grounds for its revocation, reflects the policy underpinning the Academies Act 2010. The act ensures that schools identified as requiring significant improvement are given the chance to improve with the support of a new sponsor who has the expertise and ability to provide fresh leadership and vision.

Please contact us if you would like specific advice on academy orders and the issues raised in the article.