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Dear Mr Naylor

**CALL-IN NOTICE UNDER SECTION 15(3) OF THE SCHOOLS (CONSULTATION) (SCOTLAND) ACT 2010 FALKIRK COUNCIL – DECISION TO CLOSE BOTHKENNAR PRIMARY SCHOOL**

I refer to your email of 3 June 2021 notifying Scottish Ministers of Falkirk Council's decision of 1 June 2021 to implement its proposal to close Bothkennar Primary School.

Ministers have a power under section 15(3) of the Schools (Consultation) (Scotland) Act 2010 ("the 2010 Act") to call in a closure proposal within eight weeks of the Council's decision to implement a proposal to close a school.

A three week period began on 1 June 2021 for any person to make representations to the Scottish Ministers requesting that the proposal should (or should not) be called in by them. That period expired on 21 June 2021 and no representations were received.

Under section 17(2) of the 2010 Act, the Scottish Ministers may only issue a call-in notice *if it appears to them that the education authority may have failed:*

*(a) in a significant regard to comply with the requirements imposed on it by (or under) this Act so far as they are relevant in relation to the closure proposal, or*

*(b) to take proper account of a material consideration relevant to its decision to implement the proposal.*

After consideration of Falkirk Council's proposal paper and consultation report and the further information provided by the Council on 6 July 2021, together with Education Scotland's report, the Scottish Ministers have concluded that there are grounds on which to call-in the decision to implement the closure proposal with reference to section 17(2)(a) of the 2010 Act.



## Consideration of Reasonable Alternatives

As Bothkennar Primary School is classified as a rural school, the special provisions relating to rural schools set out in sections 11A to 13 of the 2010 Act apply. These are further discussed in sections 2.5, 3.4 and 4.2 of the *Schools (Consultation) (Scotland) Act 2010: Statutory Guidance (2015)*.

The 2010 Act requires detailed consideration of any reasonable alternatives to closure prior to consulting on proposals to close a school. The Consultation Report published by the Council includes background explaining the decision to mothball the school in 2019 and notes that at a meeting of the Education, Children and Young People Executive on 26 January 2021 it was decided to move to commencing a formal consultation.

We wrote to Falkirk Council on 25 June to understand the apparent absence of this preliminary stage of the consultation process. The Council responded that, prior to the decision to commence the formal consultation, consideration had been made of the situation by the Council's Education Executive in September 2018 and March 2019, and had noted positive feedback from parents and staff about the impact of the mothballing of Bothkennar and acceptance that closure was a likely outcome.

In addition, the Council also stated in its response that consideration of alternatives was conducted via a "Strategic Property Review" where detailed assessments of possible alternatives (e.g. keeping the school open, rezoning the catchment or adding a nursery class) were considered and this had informed ongoing community engagement exercises.

Section 12A(4) of the Act underlines the importance of giving proper consideration to all reasonable options at the preliminary stage, as it only permits an education authority to publish a proposal paper where, having complied with section 12A(2), the closure proposal would be the most appropriate response to the reasons for the proposal.

There is no reference, in the proposal paper or in the consultation report, to consideration of options. Falkirk Council's response of 6 July to Scottish Ministers stated that alternatives **had** been explored as part of the Strategic Property Review. There is, however, no reference in the proposal paper or in the consultation report to the Strategic Property Review.

Falkirk Council's response to Education Scotland's comments about the lack of consideration of alternative options was, "With regard to alternatives to closure, the very low pupil roll and geography of the school catchment **ruled out consideration of any school reorganisation** to boost the roll (such as rezoning)." This appears to be in contradiction to Falkirk Council's response of 6 July to Scottish Ministers in which it was stated that alternatives **had** been explored as part of the Strategic Property Review. It is unclear which position is factually correct.

No copy was given to Scottish Ministers, as required by section 15(2)(b)(iii), of the notice which the education authority is required to publish under section 11A(3). The notice required the authority to publish reasons why it is satisfied that implementation of the proposal (wholly or partly) is the most appropriate response to the reasons for formulating the proposal identified by the authority under section 12A(2)(a). It appears that no such notice has been published by the authority as required by section 11A(3).

The issues discussed above raise doubts as to whether the Council has met the preliminary requirements in relation to rural school closure as set out in section 12A of the Act, which

might in turn undermine the Council's ability to carry out subsequent parts of the statutory consultation process in a way that complies with the requirements of the 2010 Act, including section 13.

**After careful consideration the Scottish Ministers have concluded that it appears that the Council may have failed in a significant regard to meet the statutory requirements under section 12A of the Act. The preliminary requirements of the process that apply to rural schools appear not to have been met. They are a key part of the statutory framework protecting rural schools from closure without thorough consideration and consultation on all realistic options. Failure to comply with the preliminary requirements undermines the consultation that follows, which in the view of the Scottish Ministers renders non-compliance a failure in a significant regard to comply with the requirements of the 2010 Act. There is also a risk to the wider public interest if this apparent failure undermined rural communities' ability to consider and scrutinise similar closure proposals.**

**Content of proposal paper: Previous actions to address reasons, and alternatives**

The Scottish Ministers note that the Council has failed to describe in the proposal paper the actions they have taken in the past to address the reasons for the closure proposal, or to explain why it did not take any such steps (as required by section 13(2)(b) and (c) of the 2010 Act, respectively). Moreover, the Council did not set out any alternatives to the proposal identified at the preliminary stage discussed above, explain its assessment of all relevant options, and explain why in light of such assessment the Council considers the closure proposal to be the most appropriate response (as required by section 13(2)(d) to (f)).

We also raised this point with the Council on 25 June who responded that detailed consideration had taken place citing the consideration undertaken by the Education Executive noted above and provided a description of the efforts of the Headteacher of the school to address the falling school roll through increased engagement with other local schools to broaden the educational experience of the pupils and increase the school's popularity. These efforts were unsuccessful and the fall in the school roll continued.

While this additional information is helpful, it is a requirement of the Act to include evidence of this consideration within the proposal paper and the Consultation Report. The purpose of this requirement is to ensure that the circumstances that led to the closure proposal are made clear to consultees, any steps taken to address those reasons before formulating the proposal are described (or an explanation why no steps were taken is provided), any reasonable alternatives are laid out, consultees are given a proper opportunity to respond, and the Council takes account of any such responses. It is important to note that the requirement to publish the Consultation Report and the 3-week period for further consideration in terms of section 11, are intended to allow communities a final opportunity to make further representations to Councillors. Therefore omissions such as this undermine the effectiveness and transparency of the process and the special protection given to rural schools by the 2010 Act.

**After careful consideration, the Scottish Ministers have concluded that it appears that the Council may have failed in a significant regard to comply with the requirements of section 13 of the 2010 Act. In particular, it appears that the Council has failed to describe what steps it took to address the reasons for the closure proposal, or explain why it took no such steps, which is a requirement under section 13(2)(b) or (c) of the 2010 Act. It further appears that the Council has failed to undertake a consideration of reasonable alternatives which is a requirement under section 13(2)(d) to (f). Given the**

centrality of the unsustainably low pupil roll to the Council's proposal as the identified reason for the proposal, these failures are considered to be failures in a significant regard.

### **Conclusion**

Therefore, the Scottish Ministers are calling in the proposal under section 15(3) of the 2010 Act for the reasons set out above.

As required under section 17A(2) of the 2010 Act following call in, the Scottish Ministers are referring the proposal to the Convener of the School Closure Review Panel. The Convener is required to constitute a School Closure Review Panel which will review the proposal and reach a decision in terms of sections 17B and 17C of the 2010 Act.

Falkirk Council may not implement the proposal (either in whole or in part) unless the School Closure Review Panel grants consent to the proposal (either with conditions or unconditionally) and either the period for making an appeal to the Sheriff has expired without any appeal being made, or, if an appeal is made, it is abandoned or the Sheriff has confirmed the Panel's decision (in terms of section 17A(4) of the 2010 Act).

Yours sincerely,



**LIZA MCLEAN**  
**INTERIM DEPUTY DIRECTOR, LEARNING WORKFORCE, INFRASTRUCTURE AND REFORM**