Neutral Citation No. [2014] NIQB 97 | *Ref:* **TRE9355**

Judgment: approved by the Court for handing down | *Delivered:* **25/06/2014**

*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Harper (Amanda) and Rebecca Louden's (a minor) Application [2014] NIQB 97

IN THE MATTER OF AN APPLICATION BY AMANDA HARPER AND REBECCA LOUDEN (A MINOR) ACTING BY JANICE LOUDEN, HER MOTHER AND NEXT FRIEND FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND

IN THE MATTER OF THE DECISION BY THE MINISTER OF EDUCATION TO APPROVE A PROPOSAL TO AMALGAMATE NEWTOWNBREDA HIGH SCHOOL AND KNOCKBREDA HIGH SCHOOL

TREACY J

Introduction

[1] By this judicial review the applicants challenge the decision of the Minister for Education to approve the Development Proposal proposing the amalgamation of Newtownbreda High School ("NB") and Knockbreda High School ("KB") by the closure of both schools and the opening of a new school. The applicants, who are pupils at NB oppose its closure. NB and KB are both co-educational controlled schools located on the Knock Dual Carriageway approximately equidistant on either side of the Forestside Shopping Centre. They are both located in the borough of Castlereagh and fall within the territory of the SEELB. NB offers a sixth form, KB does not.

Statutory Framework

[2] The governing statutory framework for the impugned decision is Art 14 of the Education and Libraries (Northern Ireland) Order 1986 ("the 1986 Order") which provides:

"Proposals as to primary and secondary education

14. (1) Where a board proposes—

(a) to establish a new controlled school, other than a controlled integrated school;

…..

(c) to discontinue a controlled school;

….

the board shall submit the proposal to the Department.

…..

(3) It shall, where the Department so directs, be the duty of a board to submit to the Department a proposal—

(a) to establish a new controlled school, other than a controlled integrated school**]**;

(b) that a controlled or voluntary school should be discontinued;

…..

(4) A proposal under paragraph (1), (2) or (3) shall be in such form and contain such particulars as may be required by the Department.

….

(5A) Before a proposal concerning an existing school is submitted to the Department by the board under paragraph (1) or (3), the board shall consult the following persons (or representatives of them)—

(a) the Board of Governors of the school concerned;

(b) the teachers employed at that school; and

(c) the parents of registered pupils at that school.

(5B) Before a proposal concerning any school is submitted to the Department by the board under paragraph (1), (2) or (3), the board shall consult the trustees and managers (or representatives of them) of any other school which would, in the opinion of the board, be affected by the proposal.**]**

(6) A board, after submitting a proposal to the Department under paragraph (1), (2) or (3), shall—

(a) forthwith furnish to the trustees and managers of every school which would, in the opinion of the board, be affected by the proposal such particulars of the proposal as are sufficient to show the manner in which the school would be affected;

(b) forthwith publish by advertisement in one or more newspapers circulating in the area affected by the proposal a notice stating the nature of the proposal, that the proposal has been submitted to the Department, that a copy of the proposal can be inspected at a specified place and that objections to the proposal can be made to the Department within two months of the date specified in the advertisement, being the date on which the advertisement first appears;

(c) furnish to any person, on application, a copy of the proposal on payment of such reasonable sum as the board may determine.

(7) Subject to Article 15(3), the Department, after considering any objections to a proposal made to it within the time specified in the notice under paragraph (6)(b), may, after making such modification, if any, in the proposal as, after consultation with the board or person making the proposal and, in a case to which paragraph (2)(i) applies, the Council for Catholic Maintained Schools, it considers necessary or expedient, approve the proposal and inform that board or person accordingly.

(8) In relation to a proposal made under paragraph (3), paragraph (7) shall have effect with the substitution for the references to the person making the proposal of references to the trustees and managers of the school to which the proposal relates.

(9) A proposal under paragraph (1), (2) or (3) shall not be implemented until it has been approved by the Department.

(9A) Subject to paragraph (9B), where a proposal under paragraph (1), (2) or (3) is approved by the Department after 1st April 1987, it shall be the duty of the board or person making the proposal to implement the proposal.

(9B) The Department may modify any proposal which is required to be implemented under paragraph (9A), but shall not do so except at the request of the board or person making the proposal.

…."

[3] David McMillen QC and Sean Doran represented the applicants; Tony McGleenan QC and Philip McAteer represented the respondent; and Paul McLaughlin QC represented the Notice Party, the SEELB. I am indebted to Counsel for their excellent written and oral submissions. The substantive hearing concluded on 25 June 2014 after three days of detailed submissions. During the course of these submissions the extensive documentation exhibited to the detailed affidavits was exhaustively examined. The parties and the court had significantly more material available and opened in court than at the leave hearing. By the conclusion of the hearing and the arguments it had become plain to the court that the challenge could not be sustained. Indeed, I suspect it had also become clear to the applicants. There was little if any dispute between the parties as to the applicable principles and since the court had formed a clear view as to the outcome I considered that it was desirable that I should give my decision immediately. I did this so as to avoid any uncertainty about the lawfulness of the impugned decision, to ensure that its implementation would not be impeded and also to avoid the generation of any misplaced hopes about the outcome.

[4] The applicants sought an order quashing the impugned decision and a declaration that it was unlawful.

[5] The grounds of challenge were expressed as follows:

> "(a) In arriving at the decision the Minister failed to have regard or adequate regard to recent and contemporaneous evidence concerning the educational performance of Newtownbreda High School namely the report of the ETI Follow-Up Inspection of October 2013.
>
> (b) The material relied upon by the Minister in arriving at the decision namely the Submission of the Area Planning Directorate on the East Belfast Development Proposals dated 6 December 2013 was evidentially deficient, in that it failed or failed adequately to take into account the report of the ETI Follow-Up Inspection of October 2013.
>
> (c) The consequence of the above was that the decision was based primarily on historical rather than contemporaneous evidence; this was to the detriment of the Applicants in that the performance of Newtownbreda High School was unfairly equated with the performance of Knockbreda High School, which has been subject to the formal intervention process for a period in excess of four years.

(d) The Minister failed or failed adequately to consider the alternative proposal namely the expansion of Newtownbreda High School to facilitate the integration of Knockbreda High School pupils and staff.

(e) The Minister failed to give due weight to the overwhelming opposition to the proposal to amalgamate that was expressed in the consultation process.

(f) The Minister failed or failed adequately to have regard to independent evidence that, in the majority of cases, the educational performance of schools is adversely affected by amalgamation.

(g) The Minister (and the Submission to the Minister) failed to provide a reasoned explanation as to how the proposed amalgamation would benefit Newtownbreda High School.

(h) The decision of the Minister was unreasonable in the Wednesbury sense."

[6] The applicants case was largely focused on a claim that the Minister had failed to adequately take into account the ETI's fifth follow-up inspection of October 2013. That inspection resulted in a finding that provision at the school was good, each of the previous inspections having found it to be satisfactory. Grounds (a), (b) & (c) of the challenge all relate to this central claim. It is however abundantly clear from the affidavit evidence and extensive exhibits that there is no substance to this point. I am entirely satisfied that the Minister was properly informed of the correct facts at all material times. The submission that was made to him was accurate and drew to his attention all relevant matters including the result of the follow-up inspection. This information had also been drawn to his attention separately in correspondence by the principal of NB and the points made had been specifically acknowledged by the Minister. I agree with the respondent that this argument is simply unsustainable. On a fair and proper analysis of the evidence it is manifest that proper, up to date and accurate information was furnished to and taken into account by the Minister. The weight to be attached to any factor is a matter for the discretionary judgment of the Minister and a court will not lightly interfere. His finding that the improved assessment was not a factor sufficient to lead to refusal of the proposal was reasonable.

[7] Ground (d) alleged that the Minister failed or failed adequately to consider the alternative proposal, namely the extension of NB to facilitate the integration of KB pupils and staff. This submission is confounded by the documentary material. The submission of 6 December 2012 makes repeated reference to the alternative proposal. The alternative proposal was also the focus of the adjournment debate in

the Assembly on 4 June 2013. A full reading of that debate underscores just how aware the Minister was of the issues and the claim that the alternative proposal was better. The Minister was unsurprisingly convinced by unanimous professional advice of the SEELB and ETI that amalgamation (by closure of the two schools and opening a new school) was the best means of achieving a viable and sustainable school with strong leadership delivering high quality education. The claim that the decision was unreasonable is simply not sustainable. Ground (e) alleges that the Minister failed to give due weight to what was characterised as the 'overwhelming opposition' to the proposal. While it is true that the Department had received a substantial number of objections from pupils and parents at NB the Minister was plainly aware of the scale of opposition since the objections expressly drawn to his attention in the submission. Moreover, the extent of the Ministers awareness of the objections is readily apparent from the detail of the adjournment debate. Equally of course the proposal had the unanimous endorsement of two education boards the SEELB and the BELB as well as the ETI. It is also clear that the proposal had the support of the parents and Board of Governors of KB. In reaching his decision on the proposal the Minister had to weigh a range of factors. The opposition that was expressed had to be balanced against the unanimous endorsement of the proposal by the two ELB's and the ETI and the views of other parents and pupils. This was a judgment for him to make and on the evidence before the court the contention that the Minister failed to give due weight to the opposition is untenable. Ground (f) alleged that the Minister had failed to have any or adequate regard to independent evidence in the form of a report from the Hay Group that, in the majority of cases ,the educational performance of schools is adversely affected by amalgamation. In fact it became clear during the hearing that not only had the Minister had regard to the report but that aspects of the implementation of the decision had been fashioned in light of it. I need say no more about this ground as Mr McMillen abandoned reliance on this point. At ground (g) it was claimed that the Minister (and the submission to the Minister) failed to provide a reasoned explanation as to how the proposed amalgamation would benefit NB. Once again the body of evidence before the court also confounds this submission. The material demonstrates that the Minister more than adequately communicated his reasons for the impugned decision. He did so for example in his Oral Statement to the Assembly. He also ensured that those who wanted more information were provided with the detailed Ministerial submission. I agree that if there is any public law obligation to provide reasons for a decision of this type that it has been discharged in this case.

[8] For the above reasons the application is dismissed.