

Reorganisation of schools in Ilkeston,  
Derbyshire.

EDUCATION

DECEMBER 1987

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
<del>19.2.88</del>							
<del>22.2.88</del>							
24.2.88							

PREM 19/2127



DA  
CEDFS

10 DOWNING STREET

LONDON SW1A 2AA

THE PRIME MINISTER

24 February 1988

Jean Peter,

Thank you for your letter of 28 December, enclosing one from Mr. A.J. Bridges about the reorganisation of schools in the Ilkeston area of Derbyshire. I am sorry that there has been this delay in replying, but I wanted to look into the background most carefully.

I fully understand your concern about achieving the best possible education for pupils in Ilkeston and your determination to put forward the views of your constituents on Derbyshire LEA's plans. I am aware how eloquently you have argued your constituents' case to Kenneth Baker and I recognise how disappointed they must be. I very much regret that mismanagement in the consideration of the proposal and inadequate communication with you as the constituency Member has led to the frustrations to which you refer.

As you know, under the provisions of the Education Act 1980 Local Education Authorities are empowered to make proposals for the reorganisation of their provision of schools and it is the duty of the Secretary of State for Education and Science to consider any such proposals on their merits. The Derbyshire proposals, once published, were looked at very carefully not only against the need for Education Authorities to respond to the immediate and long term effects of sharply falling age groups but also against the consideration that Kenneth Baker would not normally be prepared to approve the closure of a school of proven worth unless there was evidence that it could not continue to sustain its established quality

DA

and that the proposals for change would secure at least the same quality and variety of education at lower cost.

As regards the events leading to the Department's letter to the Authority of 18 December, I understand that you have already spoken to Kenneth Baker and that he has explained to you why he felt obliged to authorise that that letter should be sent. As I have already said, I very much regret the misunderstandings and confusions which have arisen, and I appreciate that you would welcome a decision otherwise. But, like Kenneth, I must accept the legal position. Now that Derbyshire's reorganisation proposals have been approved there is no power left to Kenneth to reverse that approval. Consequently there is no room for me to intervene.

Yours ever

Raymond

PRIME MINISTER

Here is the revised draft letter to Mr. Rost following your talk with the Secretary of State for Education on Friday. As you have asked, it contains an expression of regret about the mismanagement in the consideration of the proposal and the inadequate communication with Mr. Rost as the constituency Member.

N.L.W.

(N.L. WICKS)

23 February 1988



ELIZABETH HOUSE  
YORK ROAD  
LONDON SE1 7PH  
01-934 9000

N L Wicks Esq  
Principal Private Secretary  
No 10 Downing Street  
London SW1

22 February 1988

*Dear Nigel*

**REORGANISATION OF SCHOOLS IN ILKESTON, DERBYSHIRE**

Thank you for your letter of 19 February (received in the Department this morning).

I enclose a new draft for the Prime Minister to write to Mr Peter Rost MP, expanded as requested by the Prime Minister. This redraft has been approved by my Secretary of State.

*Yours,  
Tom.*

T B JEFFERY  
Private Secretary

J A T A E H

DRAFT FOR PRIME MINISTER TO WRITE TO MR PETER ROST MP

Thank you for your letter of 28 December, enclosing one from Mr A J Bridges about the reorganisation of schools in the Ilkeston area of Derbyshire. *I am sorry that there has been this delay in reply, but I wanted to look into the*

*background must be carefully.*  
I fully understand your concern about achieving the best possible education for pupils in Ilkeston and your determination to put forward the views of your constituents on Derbyshire LEA's plans. I am aware how eloquently you have argued your constituents' case to Kenneth Baker and I recognise how disappointed they must be. I very much regret that mismanagement in the consideration of the proposal and inadequate communication with you as the constituency Member has led to the frustrations to which you refer.

As you know, under the provisions of the Education Act 1980 Local Education Authorities are empowered to make proposals for the reorganisation of their provision of schools and it is the duty of the Secretary of State for Education and Science to consider any such proposals on their merits. The Derbyshire proposals, once published, were looked at very carefully not only against the need for Education Authorities to respond to the immediate and long term effects of sharply falling age groups but also against the consideration that Kenneth Baker would not normally be prepared to approve the closure of a school of proven worth unless there was evidence that it could not continue to sustain its established quality and that the proposals for change would secure at least the same quality and variety of education at lower cost.

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legal position. Now that Derbyshire's reorganisation proposals have been approved there is no power left to Kenneth to reverse that approval. Consequently there is no room for me to intervene.

EDUCATION, Schools in Ukestan, Dec 87





meeting record  
Subject  
master.



vc  
File

10 DOWNING STREET  
LONDON SW1A 2AA

From the Principal Private Secretary

19 February 1988

Dear Tom,

REORGANISATION OF SCHOOLS IN ILKESTON, DERBYSHIRE

The Prime Minister discussed with your Secretary of State today your letter of 8 February about this reorganisation of schools case, on which she has an outstanding reply to Mr. Rost.

Your Secretary of State explained to the Prime Minister the background to the case which had led to the view that a Minister had indeed taken the decision on 22 June. Your Secretary of State went on to say that he could not agree to the inclusion of a reference in the Prime Minister's letter to Mr. Rost which drew attention to the provisions of the Education Reform Bill which allowed schools to opt out of local authority control. Such a reference could unnecessarily complicate the achievement of any aspirations which the parents might have to make use of those provisions in the Bill.

The Prime Minister said that she would like the letter to Mr. Rost to be redrafted to make clear the regrets about the outcome of this case. I should be grateful if you could let me have a revised draft by close of play on Monday.

*has only*  
*Nigel Wicks*  
N.L. WICKS

T.B. Jeffery, Esq.,  
Department of Education and Science.

PRIME MINISTER

MEETING WITH MR. BAKER

Mr. Baker is coming to see you tomorrow to discuss the unhappy saga of the reorganisation of the Ilkeston schools. You have still outstanding the reply to Mr. Rost's letter. You wanted to talk with Mr. Baker before sending the department's draft below. You wondered whether the letter might not conclude with an extra paragraph drawing Mr. Rost's attention to the opting-out facility in the Education Bill now before Parliament.

I have suggested something on the following lines to Mr. Baker's Office:

"I know that you will be aware of the provisions in the Education Reform Bill which allow schools to opt out of the local authority control. Parents unhappy with the re-organisation may wish to consider whether they would wish to use this provision in the legislation when it is on the statute book. I know that the Department would be very ready to consider speedily and promptly, in a way compatible with the legislation, any proposals which might come forward."

Mr. Baker also wishes to discuss with you his proposal to establish a Committee on "violence in schools" (his minute at flag A) on which Andy records your comments in his letter to the DES at flag B.

Finally, Brian has submitted an interesting note at flag C on some disturbing goings-on in the Mathematics Curriculum Working Party. You will see that Brian recommends that Mr. Baker should go out of his way to produce a totally independent list of appointees to the National Curriculum Council.

N.L.W.

N. L. WICKS

18 February 1988

PMMARY



Keep this

10 DOWNING STREET  
LONDON SW1A 2AA

THE PRIME MINISTER

Thank you for your letter of 28 December, enclosing one from Mr. A. J. Bridges about the reorganisation of schools in the Ilkeston area of Derbyshire. I am sorry that I have not replied before now, but I wanted to look into the background very carefully. This I have now done.

I fully understand your concern about achieving the best possible education for pupils in Ilkeston and your determination to put forward the views of your constituents on Derbyshire LEA's plans. I know how forcefully you have argued your constituent's case to Kenneth Baker and I understand your continuing anxiety.

As you know, under the provisions of the Education Act 1980 Local Education Authorities are empowered to make proposals for the reorganisation of their provision of schools and it is the duty of the Secretary of State for Education and Science to consider any such proposals on their merits. The Derbyshire proposals, once published, were looked at very carefully, not only against the need for Education Authorities to respond to the immediate and long term effects of sharply falling age groups, but also against the consideration that Kenneth Baker would not normally be prepared to approve the closure of a school of proven worth unless there was evidence that it could not continue to sustain its established quality and that the proposals for change would secure at least the same quality and variety of education at lower cost.

As regards the events leading to the Department's letter to the Authority of 18 December, I understand that you have already spoken to Kenneth Baker and that he has explained to you why he felt obliged to authorise that that letter should be sent. I very much regret the misunderstandings and confusions which have arisen, and I appreciate that you would welcome a different decision. But, like Kenneth, I must accept the legal position. Now that Derbyshire's reorganisation proposals have been approved, there is no power left to Kenneth to reverse that approval. Consequently there is no room for me to intervene.

Peter Rost, Esq., M.P.



40 60

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

9 February 1988

Dear Tom,

RE-ORGANISATION OF SCHOOLS IN ILKESTON, DERBYSHIRE

Thank you for your letter of 8 February about this matter.

The Prime Minister would like to discuss this matter with your Secretary of State and we will arrange a meeting for early next week after the European Council.

You should know that the Prime Minister is considering adding an extra paragraph at the end of the letter drawing Mr. Rost's attention to the opting-out facility in the Education Bill now before Parliament. She may wish to suggest to Mr. Rost that parents unhappy with the re-organisation may wish to consider taking advantage of these provisions and they can rest assured that the Department would use its good offices to that end in a way compatible with the legislation. I suggest that your Secretary of State should come to the meeting with a form of words. Something on the following lines might be suitable:

"I know that you will be aware of the provisions in the Education Reform Bill which allow schools to opt out of local authority control. Parents unhappy with the re-organisation may wish to consider whether they would wish to use this provision in the legislation when it is on the statute book. I know that the Department would be very ready to consider speedily and promptly, in a way compatible with the legislation, any proposals which might come forward."

*Nigel Wicks*

N. L. WICKS

Tom Jeffery, Esq.,  
Department of Education and Science.

VC

D.R.

Tessa, RF || 0936 19th Feb  
- 10/15

You are arranging a  
meeting with Mr Baker.

PRIME MINISTER

REORGANISATION OF SCHOOLS IN ILKESTON

N.L.W.  
9-2

The DES letter below provides the detailed  
chronology of events of this sorry story  
and answers the particular questions which  
I put to the Department.

The history of these events does not improve  
with the explanation below - a catalogue of  
errors on all sides. The sadness is that  
the parents and pupils of the two schools  
concerned will be the losers.

I fear that the decision to sanction the  
reorganisation is beyond recall, following  
the Department's letter to Derbyshire LEA  
on 18 December 1987. I attach a draft  
letter for you to send to Mr. Rost.  
Alternatively, you may wish to discuss  
with Mr. Baker first.

→ Yes not

N.L.W.

N. L. Wicks

8 February 1988



ELIZABETH HOUSE  
YORK ROAD  
LONDON SE1 7PH  
01-934 9000

DLW  
B/W

CONFIDENTIAL

N L Wicks Esq  
Principal Private Secretary  
10 Downing Street  
London  
SW1

8 February 1988

Dear Nigel

REORGANISATION OF SCHOOLS IN ILKESTON, DERBYSHIRE

This letter, which is sent with the Secretary of State's approval responds to yours to the Permanent Secretary of 1 February.

I attach a detailed chronology of events, to be read in conjunction with the background note we have already sent you.

As regards your second question, the usual procedure is that, having reached a view on proposals, Mr Dunn notifies the MP concerned in confidence of his intention to announce a decision before that decision is communicated to the Authority. Mr Dunn's office indicated orally on 22 June that he intended to approve the proposals. On 23 June, following a further conversation with the Private Office the official concerned (new to the Branch) believed mistakenly that she had authority to advise Derbyshire, who were pressing for news, to that effect. She telephoned the Authority accordingly. Mr Dunn spoke to Mr Rost on 24 June to tell him of his decision. As a result of that conversation Mr Dunn decided that he wished to reconsider. The Authority was accordingly informed by telephone on 24 June that the telephone call on 23 June had been made in error and that no decision had in fact been made. Subsequently Mr Dunn's Private Office made arrangements for a meeting between Mr Dunn and the Authority to discuss the proposals on the basis that he was "minded to reject" (it is normal practice in these circumstances for Authorities to be offered the opportunity of a meeting).

A formal letter of rejection was sent to the Authority on 28 July. The Authority then made their application for judicial review of the decision. It was not until legal advisers examined the papers

\* Why was the Minister not advised by officials before he wrote on 6 July that, as was subsequently maintained, a decision on the reorganisation had in fact been reached? Was legal advice taken before the Minister wrote on 6 July?

as a result of this application that it was appreciated that Mr Dunn's approval of the proposals, recorded on the file and communicated informally to the Authority, constituted a legally binding decision even although the Department had not formally notified this. In brief, during the period 22 June - 28 July, and acting without reference to the submission file, the Branch understood Ministers to have scope for reconsideration. No need to secure legal advice was therefore perceived.

My third paragraph above also answers your third question: the official concerned was acting on the basis explained above. \*

You also asked what administrative action has been taken to prevent any repetition of the errors in this case. Officials of the Branch in the Department concerned, Schools I Branch, work to general procedures laid down in a Branch manual, particular aspects of which are highlighted from time to time in minutes from the Head of the Branch or the responsible Assistant Secretary. Since the events dealt with in the background note the standing instruction to officers of the Branch, that no information on decisions is to be communicated to LEAs until Ministers have conveyed a message to the MP concerned, has been repeated. Officers have further been instructed that they are not to communicate any decision to an LEA, whether formally or informally, without specific instructions in writing from the Private Office concerned.

I hope that this information gives full guidance to the Prime Minister in explaining why the Secretary of State recommends that a reply should go to Mr Rost on the lines of the draft enclosed with Chris de Grouchy's letter to Mark Addison of 27 January. The Secretary of State has asked me to confirm his earlier message that he is, of course, at the disposal of the Prime Minister should she wish to discuss the matter with him: he would himself welcome the opportunity to do so.

Yours,

Tom.

T B JEFFERY  
(Private Secretary)

\* what was the authority for the communication from the Department's official to the Yorkshire Education Authority on 22 and 23 June?



CONFIDENTIAL

CHRONOLOGY

DERBYSHIRE LEA'S STATUTORY PROPOSALS FOR THE REORGANISATION OF  
POST-PRIMARY PROVISION IN THE ILKESTON AREA

CHRONOLOGY OF EVENTS DESCRIBED IN BACKGROUND NOTE

- 16 January 1987 Derbyshire LEA published proposals to cease to maintain Cantelupe County Secondary School (11-16) and Ilkeston County Secondary School (11-18) with effect from end of summer term 1988, and establish in their place a new county secondary school for 750 boys and girls (11-16) from the beginning of the autumn term 1988; post-secondary provision would be at an existing tertiary college.
- 6 May 1987 Submission to Mr Dunn recommending approval of proposals.
- 13 May 1987 Mr Rost brought deputations from both Ilkeston and Cantelupe schools to see Mr Dunn.
- 22 June 1987 Private Office informed Branch orally that Mr Dunn had approved the proposals but had yet to inform Mr Rost of this decision.
- 23 June 1987 Branch sought authority orally from the Private Office to inform Derbyshire, as the LEA had asked for a decision by 24 June. Branch understood mistakenly that they had the necessary clearance to tell the LEA in confidence and accordingly rang them.
- 24 June 1987 Mr Rost spoke to Mr Dunn and the Secretary of State by telephone. Branch informed that Mr Dunn wished to reconsider the proposals. LEA informed that the telephone call on 23 June had

been based on a misunderstanding, and that Mr Dunn had not reached a decision and wanted further time for consideration. The LEA was also invited to meet Ministers to discuss the proposals.

25 June 1987	Mr Rost wrote to the Secretary of State to protest at news he had heard locally that the proposals were to be approved.
6 July 1987	Mr Dunn <u>replied</u> to Mr Rost's letter of 25 June. <u>        </u>
16 July 1987	Meeting between Mr Dunn, elected members and officers of Derbyshire LEA, and Branch officials.
27 July 1987	Proposals discussed by Secretary of State, Mr Dunn and officials. Mr Dunn asked to inform Mr Rost of decision.
28 July 1987	Letter of rejection sent to LEA.
29 October 1987	Derbyshire given leave to seek judicial review.
2 December 1987	Department's lawyers advised the papers indicated that the proposals had been approved not later than 23 June.
15 December 1987	Treasury Counsel advised that Derbyshire must be told the full facts if the Department did not concede that approval had been given.
16 December 1987	Submission to Mr Dunn and Secretary of State in light of that advice.
17 December 1987	Secretary of State and Mr Dunn spoke to Mr Rost informing him of position.
18 December 1987	Letter to Derbyshire LEA informing them of legal advice and approval of the proposals with effect from 23 June.

EDUCATION ; Ilkeston schools Dec 87



CONFIDENTIAL

Peter ROST MP

JD

file



8/2

checked 8/2

10 DOWNING STREET  
LONDON SW1A 2AA

From the Principal Private Secretary

1 February, 1988.

Dear David,

REORGANISATION OF SCHOOLS IN ILKESTON, DERBYSHIRE

I explained to you on the telephone the Prime Minister's difficulties in agreeing the letter to go to Mr. Rost in answer to his of 28 December with which he enclosed one from Mr. A.J. Bridges about the reorganisation of schools in the Ilkeston area of Derbyshire.

I think that the Prime Minister would find it helpful to have the following:

1. A detailed chronology of the events, in tabular form.
2. An explanation of why the Minister was not advised by officials before he wrote his letter of 6 July that, as was subsequently maintained, a decision on the reorganisation had in fact been reached. Was legal advice taken before the Minister wrote on 6 July?
3. The authority for the communication from the Department's official to the Derbyshire Education Authority on 22 or 23 June.
4. The administrative action taken since the unfortunate events disclosed in these papers to prevent any repetition.

I should be grateful if you could let us have this information quickly. The Prime Minister will then, I think, wish to discuss the matter with your Secretary of State.

I am sending a copy of this letter to Tom Jeffery in your Secretary of State's Office.

*Nigel Wicks*

N.L. Wicks

Sir David Hancock, KCB,  
Department of Education and Science.

CONFIDENTIAL

185

*This is the biggest mess*

*I have ever seen.*

*Decision at this moment cannot be made  
except clearly and decisively. We must have  
a meeting. no*

PRIME MINISTER

REORGANISATION OF SCHOOLS IN ILKESTON, DERBYSHIRE

The DES have now addressed themselves to this matter again, and in particular to the question you put, vis: did Mr. Dunn or did he not make a decision on 22 June to approve the proposals.

Kenneth Baker has looked at this carefully. He has provided a revised background note (flag A) which he hopes makes the sequence of events clear to you. It seems to me, however, to remain fudged in some places. More illuminating is the copy of the advice from the DES lawyer (flag B). This sets out what happened, and the legal aspects of the matter, pretty clearly.

The lawyer's view, subsequently endorsed by Treasury Counsel, was that Mr. Dunn had indeed taken the decision to approve the proposals before he saw Mr. Rost. It seems that Mr. Dunn was unaware that oral communication of the decision to the authority clinched the matter, and that there could be no going back after that.

The Secretary of State hopes that in view of what he believes to be compelling legal advice, you would be prepared to send the letter to Peter Rost, which he has amended slightly. It is attached for your signature at flag C.

If you do not wish to send the letter, I think we shall need to arrange a meeting with Mr. Baker.

On further action for the Department, they tell me that handling proposals under the 1980 Act have now been tightened up. But I think you would wish to reinforce the point by letting the DES know that:

*and... he has no intention of making a final decision*

*Rost was there any authority for that communication*

*You could therefore go for independent review (or at approved review could) on the grounds that decision had been reached BEFORE the case had been completely heard. However no Minister will refer to what written to what the M.P. says. Unannounced by parties when else can the commitment be accepted the case.*

- (i) you are concerned that Departmental procedures for dealing with statutory approvals of this kind appear to be sloppy;
- (ii) the advice of lawyers seems to have been sought at too late a stage;
- (iii) Ministers and officials appeared to be ignorant of the legal consequences of communicating decisions to education authorities orally.

You would wish the Department to look into all these points carefully so that this sort of disaster cannot happen again.

Earlier papers are at flag D.

MDA

MARK ADDISON

29 January 1988

MJ2BXX



10 DOWNING STREET  
LONDON SW1A 2AA

252011

THE PRIME MINISTER

*This wait- do.  
doubt whether an  
effective decision  
has been  
made.*

Thank you for your letter of 28 December, enclosing one from Mr. A.J. Bridges about the reorganisation of schools in the Ilkeston area of Derbyshire.

*I am sorry that I have not replied before now, but I wanted to look into the background very carefully. Thus I have now done.*

I fully understand your concern about achieving the best possible education for pupils in Ilkeston and your determination to put forward the views of your constituents on Derbyshire LEA's plans. I know how forcefully you have argued your constituent's case to Kenneth Baker and I understand your continuing anxiety.

As you know, under the provisions of the Education Act 1980 Local Education Authorities are empowered to make proposals for the reorganisation of their provision of schools and it is the duty of the Secretary of State for Education and Science to consider any such proposals on their merits. The Derbyshire proposals, once published, were looked at very carefully not only against the need for Education Authorities to respond to the immediate and long term effects of sharply falling age groups but also against the consideration that Kenneth Baker would not normally be prepared to approve the closure of a school of proven worth unless there was evidence that it could not continue to sustain its established quality and that the proposals for change would secure at least the same quality and variety of education at lower cost.

As regards the events leading to the Department's letter to the Authority of 18 December, I understand that you have already spoken to Kenneth Baker and that he has explained to you why he felt obliged to authorise that that letter should be sent. I very much regret the misunderstandings and confusions which have arisen, and I appreciate that you would welcome a different decision. But, like Kenneth, I must accept the legal position. Now that Derbyshire's reorganisation proposals have been approved there is no power left to Kenneth to reverse that approval. Consequently there is no room for me to intervene.

Peter Rost, Esq., M.P.



DERBYSHIRE LEA'S STATUTORY PROPOSALS FOR THE REORGANISATION OF POST-PRIMARY PROVISION IN THE ILKESTON AREA: BACKGROUND NOTE FOR NO. 10'S USE ONLY

1. Proposals were published on 16 January 1987 by Derbyshire LEA to cease to maintain Cantelupe County Secondary School (11-16) and Ilkeston County Secondary School (11-18) with effect from the end of the summer term 1988 and to establish in their place a new mixed county secondary school for pupils aged 11-16. Post-16 provision would be provided in the existing South East Derbyshire Tertiary College. The proposals attracted some strong objections. In addition, Mr Rost brought deputations from both schools, to see the PUSS, Mr Dunn, on 13 May 1987.

2. The proposals were considered in the Department in the light of the guidance in Circular 3/87 and of an analysis of objections made to them and of the Authority's comments on these objections, and a submission made to Ministers. The papers show that Mr Dunn was content to approve the proposals on 22 June but that he had not yet spoken to Mr Rost. Mr Rost had still not been contacted when, as a result of a misunderstanding within the Department, the LEA was informed orally and in confidence that the proposals had been approved. Mr Rost subsequently spoke to Mr Dunn as a result of which Mr Dunn wished to have more time in which to consider his view of the proposals. It was the understanding that as no decision had been communicated in writing, it was open to him to reconsider. For this reason Mr Rost was informed in the letter of 6 July that no decision had been reached.

*Was he at any time advised that in the Dept's view the decision had been made?*

3. A meeting was subsequently held with the authority on 16 July and there followed further conversations between the Secretary of State and Mr Dunn with Mr Rost. The Authority was informed in writing on 28 July that the proposals had been rejected.

4. There were then local press reports that Mr Rost was claiming that he had been responsible for reversing a decision to approve the proposals. This prompted the Authority to seek a judicial review of the Secretary of State's decision. The reliefs sought were an Order of Certiorari to quash the decision and an Order of Mandamus requiring the Secretary of State to reconsider the proposals in accordance with the law on the grounds among others that in sending the rejection letter the Secretary of State had acted illegally in that he permitted Mr Rost to by-pass the statutory procedure for objections laid down in Section 12(3) of the Education Act 1980.

5. In examining the files to prepare a reply, the Department's lawyers came to the view that, in the light of the documented evidence available on the files, together with the information mistakenly orally communicated by an official to the LEA in June, a decision had in effect been taken at that point by Mr Dunn, on behalf of the Secretary of State. The Secretary of State has no powers under the Education Act 1980 to change a decision on a proposal published under the terms of Section 12 of that Act once a decision has been reached in his name. In consequence the further consideration that was given to the case by the Secretary of State and Mr Dunn after Mr Rost's intervention in July and subsequently was irrelevant, and his later decision conveyed to the Authority in a letter from the Department dated 28 July, was therefore invalid. A copy of the legal advice is attached.

6. This advice was discussed with Treasury Counsel at a meeting on 15 December. In Counsel's opinion, while a Court would be likely to uphold such a view, it was not necessary to concede that Mr Dunn's decision, as conveyed to the Authority on 23 June was conclusive, provided that the LEA was informed of the full facts so that it could, if so advised, amend its claim to seek a declaration that Mr Dunn's approval was conclusive.

7. In the light of this advice the Secretary of State decided that he was obliged to authorise a letter to the Authority to state that the decision communicated to them on 23 June should stand and that the proposals should therefore be regarded as approved. He told Mr Rost on the evening of 17 December that he would be taking this action. A letter was sent to the Authority on 18 December accordingly.

DES  
January 1988



ELIZABETH HOUSE  
YORK ROAD  
LONDON SE1 7PH  
01-934 9000

Mark Addison Esq  
Private Secretary  
10 Downing Street  
London SW1

27 January 1988

*Dear Mark*

Thank you for your further letter, of 18 January, concerning the draft reply to Mr Peter Rost MP about the reorganisation of schools in Ilkeston, Derbyshire.

I enclose an expanded background note which my Secretary of State has approved and which he hopes makes the sequence of events, and the compelling nature of the advice from Treasury Counsel, entirely clear to the Prime Minister. I should add that Departmental procedures for handling proposals under the 1980 Act have since been tightened up.

It is recommended that the Prime Minister's reply to Mr Rost should be as in the draft I sent you on 13 January; my Secretary of State has suggested a small addition to the draft so that the second sentence of the fourth paragraph opens "I very much regret". For convenience I enclose the complete draft, incorporating this addition.

*Yours*

*Chris de Grouchy*

C G L DE GROUCHY  
*Private Secretary*



Peter ROST MP

25/1

file

to 79

10 DOWNING STREET  
LONDON SW1A 2AA

From the Private Secretary

18 January, 1988.

NEA,

See marked

passage in §2 of

DES note at Flag B.

"intended to approve" ≠ "this decision". N.C.U. 22, MA 24,

1. Mr. Wicks - 15 Dec.

2. GR - DES will be letting me have something on Monday.

The Prime Minister has seen the draft reply to Mr. Peter Rost, M.P., about the re-organisation of schools in Ilkeston, Derbyshire, which we discussed last week. She has also read the confidential background note you provided.

The Prime Minister is not satisfied with the explanation provided, and is not content to sign the draft reply. She has commented that the case is a terrible mess and cannot be explained away so easily. She has particularly noted that, if the letter of 6 July from Mr. Dunn said that no decision had been made, then surely the "decision" of 23 June can only have been a provisional one. Mr. Dunn, presumably, must know whether or not a real decision was taken at that time.

I should accordingly be grateful for a fuller account of the background, which will need to address the particular point raised by the Prime Minister. I think it would also be helpful to have copies of the letters concerned, and an indication of any views of Treasury Counsel on the point.

(M.E. Addison)

GA

Chris de Grouchy, Esq.,  
Department of Education and Science.

This letter is

not signed, see note

o - Dates memo of  
16<sup>th</sup> January. This case  
is a terrible mess and it  
can't just be explained away  
like this no



10 DOWNING STREET

LONDON SW1A 2AA

THE PRIME MINISTER

*Dear Peter,*

Thank you for your letter of 28 December, enclosing one from Mr. A.J. Bridges about the reorganisation of schools in the Ilkeston area of Derbyshire.

I fully understand your concern about achieving the best possible education for pupils in Ilkeston, and your determination to put forward the views of your constituents on Derbyshire LEA's plans. I know how forcefully you have argued your constituents' case to Kenneth Baker, and I understand your continuing anxiety.

As you know, under the provisions of the Education Act 1980, Local Education Authorities are empowered to make proposals for the reorganisation of their provision of schools, and it is the duty of the Secretary of State for Education and Science to consider any such proposals on their merits. The Derbyshire proposals, once published, were looked at very carefully against the Government's published guidance. This explains the need for Education Authorities to respond to the immediate and long term effects of sharply falling age groups. It also makes clear that the Secretary of State would not normally be prepared to approve the closure of a school of proven worth unless there was evidence that it could not continue to sustain its established quality, and that the proposals for change would secure at least the same quality and variety of education at lower cost.

As regards the events leading to the Department's letter to the Authority of 18 December, I understand that you have already spoken to Kenneth Baker, and that he has explained to you why he felt obliged to authorise that it should be sent. I much regret the misunderstandings and confusions which have arisen, and I appreciate that you would welcome a different decision. But, like Kenneth, I must accept the legal position. Now that Derbyshire's reorganisation proposals have been approved, there is no power left to Kenneth to reverse that approval. Consequently there is no room for me to intervene.

Peter Rost, Esq., M.P.

PRIME MINISTER

THE REORGANISATION OF SCHOOLS IN ILKESTON, DERBYSHIRE

This is a sorry tale of Departmental incompetence and bad luck. Peter Rost's letter at Flag A sets out his understandable concern. The Department of Education have provided a confidential background note at Flag B.

There is clearly a good deal of constituency feeling that the local education authority's proposals for a tertiary college were unacceptable. Mr. Rost's campaign against the proposals was therefore understandable. The fundamental difficulties the Department faced when confronted by the application for a judicial review have been compounded by poor communication with Mr. Rost, and failure to make sure he was aware of the steps being taken by the Department. But, when all is said and done, the Department's decision has now been subject to review by the courts, and it is therefore not possible for you or indeed Ministers at the DES to change the decision.

Mr. Rost, I understand, played a small unwitting part in this by gaining a good deal of publicity for the Department's U-turn, before the law intervened.

A sympathetic draft reply to Mr. Rost is attached at Flag C for your signature, but it has to contain a firm indication that there is, unfortunately, nothing you can do to help.

MEB  
MEA

14 January, 1988.

*But if the letter of 6<sup>th</sup> July*  
*from Bob Dunn says that*  
*no decision has been made*  
*is on the*  
*file - surely the 23rd June "decision" can*  
*only have been provisional. It will be*  
*whether or not*  
*be decided.*  
*not*





R13/1

ELIZABETH HOUSE  
YORK ROAD  
LONDON SE1 7PH  
01-934 9000

Mark Addison Esq  
10 Downing Street  
London SW1

13 January 1988

*Dear Mark*

You asked for a draft letter for the Prime Minister to write to Mr Peter Rost MP reformulated from that enclosed with my letter to you of 8 January.

I enclose a new draft.

*Yours*

*Chris de Grouchy*

C G L DE GROUCHY  
Private Secretary

2 Feb.

DRAFT FOR PRIME MINISTER TO WRITE TO MR PETER ROST MP

Thank you for your letter of 28 December, enclosing one from Mr A J Bridges about the reorganisation of schools in the Ilkeston area of Derbyshire.

I fully understand your concern about achieving the best possible education for pupils in Ilkeston and your determination to put forward the views of your constituents on Derbyshire LEA's plans. I ~~am aware how eloquently~~ <sup>know how keenly</sup> you have argued your constituents' case to Kenneth Baker and I understand your continuing anxiety.

As you know, under the provisions of the Education Act 1980, Local Education Authorities are empowered to make proposals for the reorganisation of their provision of schools and it is the duty of the Secretary of State for Education and Science to consider any such proposals on their merits. The Derbyshire proposals, once published, were looked at very carefully against the Government's published guidance. This explains the need for Education Authorities to respond to the immediate and long term effects of sharply falling age groups. It also makes clear that the Secretary of State would not normally be prepared to approve the closure of a school of proven worth unless there was evidence that it could not continue to sustain its established quality and that the proposals for change would secure at least the same quality and variety of education at lower cost.

As regards the events leading to the Department's letter to the Authority of 18 December, I understand that you have already spoken to Kenneth Baker and that he has explained to you why he felt obliged to authorise that ~~it~~ should be sent. I much regret the misunderstandings and

confusions which have arisen, and I appreciate that you would welcome a <sup>different</sup> decision, ~~otherwise~~. But, like Kenneth, I must accept the legal position. Now that Derbyshire's reorganisation proposals have been approved there is no power left to Kenneth to reverse that approval. Consequently there is no room for me to intervene.

20/1



ELIZABETH HOUSE  
YORK ROAD  
LONDON SE1 7PH  
01-934 9000

M Addison Esq  
10 Downing Street  
London SW1

8 January 1988

*Dear Mark*

In response to your letter of 30 December 1987, I enclose a draft on the lines of which my Secretary of State recommends that the Prime Minister should reply to Mr Peter Rost MP's letter to her of 28 December.

By way of background I also include copies of the most recent correspondence between my Secretary of State and Mr Rost (Mr Rost's letter of 21 December and Mr Baker's reply of 7 January) and a brief note about the case for No 10's use only. I hope that these enclosures will be self-explanatory.

*Yours  
Chris*

CGL DE GROUCHY  
*Private Secretary*

**DRAFT FOR PRIME MINISTER TO WRITE TO MR PETER ROST MP**

Thank you for your letter of 28 December, enclosing one from Mr A J Bridges about the reorganisation of schools in the Ilkeston area of Derbyshire.

Under the provisions of the Education Act 1980 Local Education Authorities are empowered to make proposals for the reorganisation of their provision of schools and it is the duty of the Secretary of State for Education and Science to consider any such proposals on their merits. The proposals were looked at very carefully indeed against the Government's published guidance on their policies in the Department's Circular 3/87 which points out the need for Authorities to respond to the immediate and long-term effects of sharply falling age groups, particularly for the 11 to 19 age range. That guidance also makes clear that the Secretary of State would not normally be prepared to approve the closure of a school of proven worth unless there was evidence that it could not continue to sustain its established quality and that the alternative proposals would secure at least the same quality and variety of education at lower cost.

As regards the events leading to the Department's letter to the Authority of 18 December, I understand that Kenneth Baker has already explained to you why he felt obliged to authorise that that letter should be sent. Now that Derbyshire's reorganisation proposals have been approved there is no power left to Kenneth Baker to reverse that approval and, consequently, no room for me to intervene.

SS/179/25



ELIZABETH HOUSE  
YORK ROAD  
LONDON SE1 7PH  
01-934 9000

Peter Rost Esq MP  
House of Commons  
London SW1A 0AA

7 January 1988

*Ken Peter*

You wrote me a further letter, on 21 December, about the Ilkeston proposals. I understand that you now have a copy of the Department's letter to the Authority, but I must repeat the apologies made on my behalf about the manner of the announcement. I much regret this.

On substance, I think I need not in this letter repeat what I have said except to confirm that the general guidance on the organisation of schools which I have issued is in Circular 3/87, which was published in the early summer of last year; and that I do look very carefully indeed at any proposals made to me under the 1980 Education Act which involve the closure of schools with good records. When we talked most recently I explained that I was taking the action I have now taken on the basis of firm legal advice I have received, that I was not empowered to decide to reject the proposals in July, an earlier decision having in effect been taken in June.

You pose a number of questions in your letter about advice you were given earlier and about what was said to the Authority. So far as the earlier events were concerned, Bob Dunn's letter to you of 6 July, which you enclosed with yours, explained that there had been some misunderstandings within the Department on the basis of which the Authority was informed that a decision had been made. I have already explained to you that in the light of legal advice which I have received these earlier events constituted a decision which, under the provisions of the Education Act 1980, it was not open to me to reconsider. I felt myself obliged to direct that the Department's letter of 17 December should be sent. I really do not think that there is anything further I can usefully add.

I do understand your feelings, and your concern and am very sorry about the way this proposal has been handled.

*Yours ever*  
*Kenneth*

X

**DERBYSHIRE LEA'S STATUTORY PROPOSALS FOR THE REORGANISATION OF PROVISION IN THE ILKESTON AREA: BACKGROUND NOTE FOR NO 10'S USE ONLY**

1. Proposals were published on 16 January 1987 by Derbyshire LEA to cease to maintain Cantelupe County Secondary School (11-16) and Ilkeston County Secondary School (11-18) with effect from the end of the summer term 1988 and to establish in their place a new mixed county secondary school for pupils aged 11-16. Post-16 provision would be provided in the existing South East Derbyshire Tertiary College. The proposals attracted some strong objections. In addition, Mr Rost brought deputations from both schools to see the PUSS, Mr Dunn, on 13 May 1987.
2. The proposals were considered in the Department in the light of the guidance in Circular 3/87 and of an analysis of objections made to them and of the Authority's comments on these objections, and a submission made to Ministers. Mr Dunn indicated on 22 June that he was minded to approve the proposals and that Mr Rost should be informed. As a result of a misunderstanding within the Department this decision was communicated orally and in confidence to the LEA on 23 June. Following this the Secretary of State held a meeting with the Authority and there were further telephone conversations between the Secretary of State and Mr Dunn with Mr Rost. The Authority was informed in writing on 28 July that the proposals had been rejected.
3. There were then local press reports that Mr Rost was claiming that he had been responsible for reversing a decision to approve the proposals. The Authority sought, and was granted, leave to seek a judicial review of the Secretary of State's decision. The reliefs sought were an Order of Certiorari to quash the decision and an Order of Mandamus requiring the Secretary of State to reconsider the proposals in accordance with the law on the grounds among others that in sending the rejection letter the Secretary of State had acted illegally in that he permitted Mr Rost to by-pass the statutory procedure for objections laid down in Section 12(3) of the Education Act 1980.
4. In examining the files to prepare a reply the Department's lawyers came to the view that, in the light of the documented evidence available on the files, together with that orally communicated to the LEA in June, a decision had in effect been taken at that point by Mr Dunn, on behalf of the Secretary of State. Treasury Counsel confirmed that this would have to be revealed. The Secretary of State has no powers under the Education Act 1980 to change a decision on a proposal published under the terms of Section 12 of that Act once a decision has been reached in his name. In consequence the further consideration that was given to the case by the Secretary of State and Mr Dunn after Mr Rost's interventions in July and subsequently was irrelevant, and his later decision therefore invalid.

CONTD

5. The Secretary of State decided that he was obliged to authorise a letter to the Authority to state that the decision communicated to them on 23 June should stand and that the proposals should therefore be regarded as approved. He told Mr Rost on the evening of 17 December that he would be taking this action. A letter was sent to the Authority on 18 December accordingly.

DES

January 1988



Peter Rost MP  
13/11



FILE  
DA

10 DOWNING STREET  
LONDON SW1A 2AA

*From the Private Secretary*

30 December 1987

I enclose a copy of a letter which the Prime Minister has received from Peter Rost MP, together with correspondence from Mr. A.J. Bridges.

I should be grateful if you would provide a draft reply for the Prime Minister's signature, to reach this office by 13 January.

(Mark Addison)

Chris de Grouchy, Esq.,  
Department of Education and Science.

✓



10 DOWNING STREET  
LONDON SW1A 2AA

*From the Private Secretary*

30 December 1987

I am writing on behalf of the Prime Minister to thank you for your letter of 28 December, with which you enclosed correspondence from Mr. A.J. Bridges.

I will ensure that you receive a reply as soon as possible.

I am returning an unsigned letter to a Judith Whyte which was also enclosed with your letter in error.

(Mark Addison)

Peter Rost, Esq., M.P.

PETER ROST M.P.

CEAH



HOUSE OF COMMONS

LONDON SW1A 0AA

The Rt Hon Margaret Thatcher M.P.  
The Prime Minister,  
10 Downing Street,  
WHITEHALL,  
London S.W.1

01-219-3000

Secretary & Messages

04427 6123

28th of December, 1987

*Dear Prime Minister*

I fully appreciate the extent of your 'post-bag' and hesitate to add to it, however, the situation which has developed over the education proposals for the Ilkeston area in Derbyshire, has become very serious indeed.

I enclose a letter which I have received from Mr A.J.Bridges, a parent governor of Ilkeston School, which puts the outline of the problem fairly succinctly. Briefly, the proposals seemed to be about to be approved, then there was a delay and then they were rejected. On the 18th of December, however, this decision was suddenly over-turned and the proposals were accepted.

Obviously, there is more to this which you should know about. On the 25th of June, I wrote to Kenneth Baker expressing grave concern over the 'cosy' relationship which appeared to exist between the left-wing labour controlled Derbyshire County Council and the Department of Education, which had led to an 'inspired leak' well publicised throughout Derbyshire that the Secretary of State was about to approve the socialists' plans for the re-organisation of education in the Ilkeston area. I received a letter back, dated the 6th of July from Bob Dunn, not only emphatically denying any collusion, but also stating that no decision had been made, that the Derbyshire authority had been invited to the DoE 'to discuss certain aspects of the proposals' and that the 'LEA's proposals...remain very much an open question.' On the 28th of July, I was telephoned at my home by Bob Dunn, who told me that the Secretary of State was about to

sign the approval of the Ilkeston proposals. I was encouraged to telephone Kenneth Baker and to plead with him to reject these proposals, which are unanimously felt by all, other than the Matlock socialists, to be completely contrary to the Secretary of State's own guidelines. Some time after my call, I was telephoned and told that Kenneth Baker had rejected the proposals on the grounds that 'they would constitute a reduction in parental choice.'

Derbyshire County Council, predictably, reached for their lawyers and threatened a judicial review. On the 17th of December, at 11.0pm I was called in to see Kenneth Baker, who was with Bob Dunn. I was told that the decision of the 28th of July would not stand and was being replaced with one which had been made by Bob Dunn, acting on the Secretary of State's behalf, on the 23rd of June and that the Secretary of State could not 'withdraw that approval'. I was further asked not to make anything public until Monday the 21st, when Derbyshire would be notified.

I was telephoned the next morning, the 18th of December, by the press. Derbyshire County Council had made sure that everyone had a copy of the letter of 'approval'. I managed to read the letter with a magnifying glass from the reproduction on the front page of the Derby Evening Telegraph. I received a copy finally, by Data Post, from the DoE on Christmas Eve after I had complained that the Conservative leader of the Council, Education Spokesman, the Heads and non-socialist governors of the schools concerned, as well as myself, had had no copy of the letter.

I really cannot let this matter rest. Apart from the contradictions which we have had from the Secretary of State and his Minister, the proposals which now seem to have been approved are directly against his own guidelines, involving as they do the closure of one of the two most popular schools in the area and the destruction of the Vith Form of the other!

*L. E. O.*  
*R. E.*

TEMPORARILY  
RETAINED

J. Gray

14/3/2016

THIS IS A COPY. THE ORIGINAL IS  
RETAINED UNDER SECTION 3.(4)  
OF THE PUBLIC RECORDS ACT

21/12/87

Dear Mrs Thatcher,

I am writing to ask you to intervene in a decision recently reached by your Secretary of State for Education regarding the reversal of a decision he made in respect of reorganisation of Secondary Education in the Ilkeston area of Derbyshire.

The facts of the case are as follows:-

1. Derbyshire County Council issued a proposal for reorganisation of Secondary Education for 11 to 16 year olds together with proposals for the provision of 16+ education.
2. A group of interested & concerned parents and staff from Ilkeston School put forward a viable alternative to the County Plan which would cause far less disruption than the County Plan.
3. This alternative plan was put to Mr R. Dunn at a meeting in May 1987. This meeting was arranged by Mr P. Rest MP.
4. The Secretary of State for Education rejected the County Council proposals and threw them out, July 1987.
5. Recently Derbyshire County Council applied for a judicial review of the situation & have been told by Mr Baker that his original decision to reject, was not lawful.

Obviously the case is far more comprehensive than mentioned above and would take a considerable time to explain in detail.

I would suggest to you that the situation has now been reached whereby a left wing Labour Authority is being backed by your Government in implementing its proposals.

The decision reached by Mr Baker recently, goes against

your Government's Education policy in that the most successful schools should be allowed to develop. The proposal will not allow the same freedom of choice for parents. The new merged school will be on a split site, half a mile apart. There are no firm proposals for capital spending at the new merged school. It will cause a massive upheaval to both children and staff. All the above points seem to be in total conflict with your Government's Policy.

It would appear that a "deal" has been arranged between Derbyshire County Council and Mr Baker in reaching his decision, I refer to the Sixth Form provision at Ecclesbourne School, Duffield and John Port School, Etwall, Derbyshire.

Anyone who has studied the situation in detail would come to only one conclusion and that is that the County proposals are a recipe for disaster. I doubt whether the viable alternatives have been considered by Mr Baker.

I would therefore appeal to you to apply some logic and sense to the situation and instruct the Secretary of State for Education to again reverse his decision and reject the Derbyshire County proposals. Mr Peter Rost MP is very well aware of the situation and would provide any relevant details.

I am a very disillusioned supporter of your Government's Education policy in the light of the above.

Yours hopefully

Mr A. J. Bridges

PARENT GOVERNOR  
ILKESTON SCHOOL.  
(and a very concerned parent.)

PETER ROST M.P.



HOUSE OF COMMONS

LONDON SW1A 0AA

01-219-3000

Secretary & Messages

04427 6123

Rt Hon Kenneth Baker M.P.,  
Secretary of State,  
Department of Education & Science.  
Elizabeth House,  
York Road,  
LONDON SE1 7PH

21st of December, 1987

*Peter Rost*

At our meeting at 11.0pm on the 17th of December, I was asked to keep the decision which you were to make about the Derbyshire County Council's proposals for the Ilkeston area, confidential until Monday the 21st of December. I was also assured that I would have a copy of the letter which the Department was to send to Matlock. Since our meeting, I have four mailings from the House of Commons and still have no copy of the letter in question. I have managed to read the letter, however, with the aid of a magnifying glass from its reproduction on the front page of the Friday 18th of December's edition of the Derby Evening Telegraph. Any embarrassment I may have caused you, is more than equalled by the experience I have had with the National Press and media telephoning me, with everyone, it seems, having a copy of your letter to Matlock (received Friday morning) except myself, the leader of the Conservative Group and Mrs Noskwith the Conservative Education Spokesman. It seems that only the labour opposition are to be supplied with any information! Was this intentional to prevent us taking any action?

However, my embarrassment is only a very minor issue. I, and my constituents, have obviously been both deceived and betrayed by the Department of Education and Science. I would ask for straight answers from you, not your Under-Secretary of State, to the following questions:-

1. Why was I not given a copy of the letter to Matlock on the 17th of December?

2. I enclose a copy of my letter to you of the 25th of June, following the most 'embarrassing' to me, 'leak' from the Department. Please re-read this letter, which is a fair statement of the situation in Derbyshire. I enclose a copy of the reply from Bob Dunn of the 6th of July, to my letter of the 25th of June. Please explain how he could write in such terms to me, knowing that he had already approved Derbyshire's proposals?

3 Why was I encouraged to speak to you, by Bob Dunn, on the 28th of July on the understanding that you were 'considering' the proposals, if they had already been 'considered' by him on the 25th of June?

4. Miss A F Brown's letter to Matlock (ref S910/4/054) of the 28th of July 1987 is, I presume, some sort of joke on the part of the DoE in order to make me and my Conservative colleagues in Derbyshire, look stupid. May I have a copy of the official letter of approval of Derbyshire's proposals of the 25th of June (which Bob Dunn seems unaware of in his letter of the 6th of July!)?

5. How can you consistently, approve proposals put forward by Derbyshire which are in direct contra-diction, on all counts, to your own stated guidelines?

You cannot imagine what the impact is on the parents of children at the schools in Derbyshire which the socialists are seeking to destroy, when they see pictures of you patting youngsters in neat school uniforms on the head and talking about 'parental choice' and 'standards', when they have seen their own children's schools deliberately deprived of funding and teachers, uniforms banned and parental choice a mockery! You mentioned Ilkeston School's Vith Form's results, and I presume that you have not seen the latest results which show a marked improvement and return to Ilkeston's normal high standards, neither have you considered the way in which Derbyshire deliberately refused cover at the school during the teachers' disputes. So, you would judge a school, which had no cover given for illness, had the numbers of teachers reduced and was





HOUSE OF COMMONS  
LONDON SW1A 0AA

page three

severely affected by the strikes, against an FE College which had a much wider constituency, considerably better staffing and resources and had no problems with disputes, and find the school wanting?

I may be an irritation to you and your Under-Secretary of State but I would point out that I am at least trying to protect my constituents and three good schools from the socialists controlling the County Council. At least now 'common justice' would require you to come to Ilkeston and to see for yourself the consequence of your own actions. Let me show you the two excellent schools you are aiding in destroying.

*James Lewis*

*RLS*

(Ref SCHOOLS DOE5)

The Rt Hon Kenneth Baker M.P.,  
Secretary of State for Education & Science,  
Dept of Education & Science,  
Elizabeth House,  
York Road,  
LONDON  
SE1 7PH

25th of June, 1987

IN CONFIDENCE

I was most concerned yesterday to be telephoned by my local press in Ilkeston, Derbyshire, to be asked for my comments on "the approval of the County Council's plans for Ilkeston Schools, by the Minister!" I was so amazed that I reserved my comments. On investigation, I find that the proposals have not 'yet' been approved and that it seems that someone in the DES had 'jumped the gun' and informed Derbyshire County Council!

My serious concern is twofold; firstly, that there should be such a direct link between this extreme, left-wing LEA and the DES, which might indicate a lack of impartiality in the advice given by officials on Derbyshire's plans and secondly, in the apparent lack of confidentiality in the DES.

The recent election campaign has done nothing to revise my extreme worries about Derbyshire's grip on education. We have found evidence of intimidation of teachers, governors and other staff, of apparent nepotism and other morally corrupt practices. I really have sent people on request in 'unmarked cars' to private houses, to hear what is happening in certain schools! Very many people, parents and teachers alike, voted conservative, because of our promises to wrest education from the grip of the left-wing at Matlock.

cont/

Ilkeston School, the former Grammar School at which D H Lawrence was once a teacher, is rejoicing at the conservative victory and the prospect of becoming one of the first to become 'independent' of the comrades at Matlock, and of reasserting those values of academic discipline which are not favoured by the left. I would regard any decision on Derbyshire's proposals which harms these aims of Ilkeston School, as a direct betrayal of their trust and of our stated policies.

Since gaining office, the left-wing in Derbyshire have systematically set about removing officials who do not 'suit their thinking'. I have marked this letter 'confidential' as there is a genuine fear of reprisal common at all levels of the educational establishment. When I brought, recently, a group of representatives from schools affected by closure and merger proposals by the LEA, to see Bob Dunn, the heads in each case had been approached by the senior county education adviser and a union representative from the education committee and pressured not to attend; pressure, which I regret to say they found unable to resist! As one teacher once put it to me "...they have got rid of a Chief Constable, County Surveyor, Chief Executive, Chief Fire Officer and numerous others, who am I to take them on?"

I am aware that usually, and with good reason, the submissions from LEAs backed by their officials and advisers are given great weight by the DES when examining proposals affecting schools. I hope that I have given some indication why I feel that great caution should be exercised in Derbyshire's case, especially as it would appear that someone in the DES might have a line of contact with them. I will be seeing Bob Dunn shortly, about this situation (hence my copying this letter to him), but I would like to make it quite clear that as I regard the proposals for Ilkeston as completely outside and contrary to the DES guidelines for the reorganisation of education, I will resist loudly and long, if there is any endorsement of them by a conservative government!



DEPARTMENT OF EDUCATION AND SCIENCE

ELIZABETH HOUSE YORK ROAD LONDON SE1 7PH

TELEPHONE 01-934 9000

FROM THE PARLIAMENTARY UNDER-SECRETARY OF STATE

Peter Rost Esq MP  
House of Commons  
London SW1A 0AA

6 July 1987

Dear Peter

Kenneth Baker has asked me to reply to your letter of 25 June as I have been dealing with the Ilkeston proposals.

I have noted carefully all you say about the political complexion of the Derbyshire authority and the bearing that this has on the proposals. As you know, the Secretary of State has a duty to consider such proposals on their individual merits. This detailed consideration is proceeding and we have now invited the authority to discuss some aspects of the proposals with us.

So far as the Department is concerned I believe you are under a misapprehension. Officers in the Department routinely have extensive contacts, on a wide range of matters including schools reorganisation, with officers of the Derbyshire LEA, as they do with those of all other education authorities. In this instance, as a result of a series of unfortunate misunderstandings here, an officer of the Department understood that she had authority to tell the authority, in confidence, that formal approval was to be given to the Ilkeston proposals, when in fact no such decision has been made. I am sorry for any embarrassment this may have caused you and I have taken steps to ensure that errors of this kind are not repeated. I have however complete confidence in the integrity and impartiality of the officials who advise me on these matters - though I do not necessarily follow their advice in every instance.

I understand the strength of local feeling on the future of Ilkeston School and you can be assured that the Secretary of State will bear this in mind in considering the LEAs' proposals, which remain very much an open question.

Yours ever  
Bob

BOB DUNN

Mr Coleman  
Mr Norbury  
Miss Brown ✓

MISS GILBEY

R V SECRETARY OF STATE FOR EDUCATION EX PARTE DERBYSHIRE  
COUNTY COUNCIL: ILKESTON

I have now examined Derbyshire's application for judicial review, the Department's file S910/4/54 and the submission file of that number. It seems to me that in the circumstances which have happened the Department is not in a position to defend these proceedings.

It appears that Schools Branch forwarded a submission to Mr Dunn's office on 6th May 1987 recommending approval of Derbyshire's proposals. On 19th June it appears that Mr Dunn's private secretary in a manuscript note informed the Minister that there was pressure for a decision to be made and asked him if he approved the proposals. It appears that at some point between the submission of that manuscript note and some time on 23rd June Mr Dunn gave his approval. The manuscript note of 19th June bears what appears to be a confirmatory tick, the private secretary's manuscript note to the Minister of 23rd June refers to "the decision taken on the Ilkeston proposals" and offers a speaking note which says "the Secretary of State has decided to approve these proposals" and goes on to give reasons for doing so.

Miss Brown confirms that in the late afternoon of 23rd June she telephoned Derbyshire LEA and informed Mr Jenkin in the Education Department in confidence of the decision. She promised to send a letter confirming what she had said on the following morning. It appears that on the morning of the 24th June Mr Peter Rost MP who somehow had got to hear of the decision telephoned the Secretary of State to say that he was unhappy with the decision. Following that conversation it appears that the Secretary of State wished to review the decision and the LEA was informed by telephone that the Department would like to discuss the proposals with them. I presume, as is alleged by the applicants, that the LEA was also informed that the previous day's message was incorrect.

In my view those facts indicate that approval was given to Derbyshire's proposals pursuant to section 12(6) of the 1980 Act, at the latest, when Miss Brown told the LEA on the telephone of Mr Dunn's decision. It is of course trite law that a decision by a junior minister is a decision of the Secretary of State (see Carltona Ltd v Commissioners of Works (1943)). It is arguable that for the purposes of section 12(6) the Secretary of State does not "approve" proposals until his assent to them is communicated to the

LEA. Approval under section 12(6) need not involve the doing of an irrevocable act, such as occurs when the Secretary of State makes regulations by signing and dating them. It is also relevant that the significance of approval is to give rise to the duty in section 12(9) on a LEA to implement approved proposals. Until the LEA is told of the decision, therefore, it is arguable, particularly in a case where the person approving the proposals does so without committing anything to paper, that the proposals are not "approved" within the meaning of section 12(6).

In the present case, however, (and leaving aside any significance to be attributed to the confirmatory tick) the LEA were informed of the decision taken. I think communication to an official and communication which is oral is sufficient. In the present case, according to the applicants, the decision was also communicated to the Chairman of the Education Committee. In these circumstances, I see no grounds on which the Department could contend that no approval had been given on 23rd June. I have considered whether the subsequent revocation of that communication by a similar telephone call on the following morning might permit of a different conclusion. Although it can be said that the authority would have done nothing to implement the proposals before receiving the second communication and so in that sense would not have been prejudiced by a reconsideration of the decision, I do not think such considerations are relevant to determining the point at which proposals are approved for the purposes of section 12(6). I therefore conclude that Derbyshire's proposals were approved by the Secretary of State at the latest on 23rd June. There is no provision whereby an approval can be revoked, so that the letter of 28th July purporting to reject the proposals in my view is of no effect.

In view of the implications of this advice for the Secretary of State's position I am asking Treasury Solicitor to obtain Treasury Counsel's views on the point. If he confirms this advice, I think it would be appropriate for the Department to write to Derbyshire indicating that in the light of the advice it has now obtained it has to inform Derbyshire that its proposals were approved on 23rd June. I would expect Treasury Solicitor then to invite Derbyshire to withdraw their application on terms that the Crown pays Derbyshire's costs.

For the sake of completeness I would add that I do not regard paragraphs 12 and 13 of the application as well founded. Whilst section 12(3) guarantees the rights of objection laid down there, I do not think it prohibits the Secretary of State from taking into account objections submitted directly to him and objections by fewer than 10 local government electors for the area. However, as paragraph 14 implies, it is incumbent on the Secretary of State in reaching his

decision to act fairly and this requires him to give proposers an opportunity to comment on such non-statutory objections.

In the present case the reason given in the decision letter of 28th July was not one on which the authority had not had an opportunity to comment: it appears at paragraph 2(i) of Mr Dunn's briefing note of 14th July and is mentioned in paragraph 2(3) of the exhibit to Mr Jenkin's affidavit.

The difficulty in the present case, however, is whether the Secretary of State took into account an irrelevant consideration in deciding to reject the proposals. According to the applicants, the Secretary of State was influenced by party political considerations and/or the possibility of providing an opportunity for Ilkeston School to take advantage of the Government's proposed opting out legislation. If the case were to be pursued, it would be necessary for evidence by or on behalf of the Secretary of State to be adduced dealing with these allegations. On the latter point, the Divisional Court in R v Secretary of State for the Environment ex parte Birmingham City Council (The Times 30th March 1987) held that in deciding to refuse to make a rate support grant report for 1987/8 the Secretary of State for the Environment was entitled to take into account the presence of a Bill before Parliament which would render the report otiose. I doubt, however, whether a court would regard the existence of a Government policy to introduce legislation some months in the future and which in any event would only provide others with an opportunity to opt out if they so wished, as a relevant consideration in considering section 12 proposals. However, for the reasons already given, I do not think we need pursue this aspect.

*Alan D. Preston*

A D PRESTON  
Legal Branch  
2 December 1987

# Grey Scale #13



**A** 1 2 3 4 5 6 **M** 8 9 10 11 12 13 14 15 **B** 17 18 19



Inches 1 2 3

Centimetres 1 2 3 4 5 6 7 8

## Colour Chart #13

Blue Cyan Green Yellow

