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DEPARTMENT OF EDUCATION AND SCIENCE

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FROM THE SECRETARY OF STATE

Rt Hon Patrick Jenkin MP
Secretary of State for the Environment
2 Marsham Street
London SW1P 3EB

6 February 1985

Dear Patrick.

LIVERPOOL: CAPITAL EXPENDITURE

Thank you for your letter of 5 February.

I am concerned that, whatever view might be taken by a court of whether a Section 78 direction would override a specific statutory duty (the legal point on which as you say our officials have been unable to agree), any such conflict should be avoided, if the point is reached at which a direction is issued. This will entail, as you say, issuing a consent or consents as necessary under the direction. Such a step is likely to be necessary to enable the Liverpool authority to fulfil its duties under Section 12(9) and Section 13(6) of the Education Act 1980 in respect of proposals for secondary school reorganisation which I have approved with a set implementation date under Sections 12(6) and 13(4) respectively. The consents would be needed to enable the authority to enter into the necessary contracts, if they had been unable to do so before 1 April, and perhaps to incur expenditure at a later stage. There could also be other instances of such statutory duties in respect of education provision.

I understand that you have been advised that a direction should not be qualified and that consents should not be of a general nature, but should be considered by you case by case. I therefore ask you to agree that my officials should be consulted on applications for consent which involve education.

I fully share your objective of wishing to curb wasteful and irresponsible expenditure, but my approval of the authority's secondary school reorganisation proposals was given with consequential savings of recurrent expenditure very much in mind. It would be politically very damaging if Liverpool could argue that we were blocking projects which would have produced substantial current savings by their implementation.

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The course of action you propose may not lead to the issue of a direction, or not yet. But since that is the underlying threat I think we should be very careful at the outset not to create any impression that we are intending to provoke a conflict with statutory duties. While it could be argued that a simple reference, as in your draft warning letter, to a Section 78 direction should be sufficient to demonstrate to the authority that consents will be considered as provided for in the Section, I think this should be made explicit. That could be achieved by inserting a sentence as follows after the words "the year beginning 1 April 1985" in the third paragraph:

"This would have the effect of prohibiting the authority from making payments or entering into contracts in the terms of that Section without his consent."

I hope you will find it possible to add something on these lines.

Copies of this letter go to the Prime Minister, members of MISC 109, Peter Rees, Patrick Mayhew and Sir Robert Armstrong.

Erwin

Kevin