

*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 refuse to write to what was announced by parties when else can the commitment be accepted to court.*



- (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





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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





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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*