

**KELSEY ESTATE PROTECTION ASSOCIATION (KEPA)**

- *The Residents' Association Protecting the Amenity of the Historic Kelsey Estate and the Manor Way Conservation Area* -

**PRE-ACTION LETTER – JUDICIAL REVIEW**

7 September 2015

By email:

To:

Mr Jim Kehoe, Head of Planning

CC:

Mr Doug Patterson, Chief Executive

Ms Paine, lawyer

Cllr Stephen Carr, Leader of the Council

Cllr Peter Dean, Chair Development Control Committee

Dear Mr Kehoe

Thank you for your email and letter 4 September enclosing appendices from Bromley education in respect of educational need and RPS in respect of the traffic report.

Section 8 of KEPA's pre-action letter set out expected action to take to resolve the proposed judicial review. Ms Paine's reply invited KEPA to meet with the Authority to discuss this point of resolution. KEPA committee members arranged diaries to meet with you and your colleagues on 11 September. We declined your subsequent suggestion to invite third parties to this meeting and set out the reasons why your suggestion would be inappropriate and prejudicial to the judicial review. We suggested you may wish to present discussions you had had with third parties to the meeting and that we would then consider whether a wider follow-on meeting would be appropriate. You have informed us that you have disregarded our view and invited one or more third party. Accordingly, we are forced to conclude that you have cancelled the 11 September meeting between KEPA and the Authority and KEPA members have now reinstated their diaries with work commitments moved for your diary. Nevertheless, KEPA stands ready to meet with the Authority in a bilateral meeting as originally agreed at a revised date proposed by the Authority and we have provisionally cleared the afternoon of Friday 18 September if that is helpful.

In the interest of completeness we also comment on the appendices enclosed in your letter appended to this letter.

Yours sincerely

Mike Mielniczek  
For KEPA

## APPENDICE

**Traffic Survey and Lambeth Methodology.** We are not clear why the Authority invited RPS to comment on KEPA's assertion that the Authority misdirected the planning committee in respect of the traffic survey report. The letter implies that the Authority has invited the applicant and RPS to address this point on the Authority's behalf, which would clearly be inappropriate. Notwithstanding this important point RPS's technical note is incomplete and mis-understands the substance of the mis-direction.

RPS point out that the detailed application of the LM is not prescribed and is designed to be flexible and common sense should prevail. However, they fail to mention that its application is proscribed by the test of **rationale** and **reasonableness** and a judgement about rationale and reasonableness is implicitly referenced against the 200m non-commercial and 500m commercial limits, otherwise that distinction within the LM would be meaningless. Accordingly, the flexibility of its application does not extend so far from the non-commercial survey limit of 200m to be in excess of the commercial survey limit of 500m or to go around corners onto busy main roads. RPS imply that it would be reasonable to survey the whole length of Manor Way and beyond. The rationale of the 200m non-commercial deployed by Bromley for primary schools is the recognition that parents will strive to park within this limit and create traffic congestion and danger in doing so and it is therefore unreasonable and irrational to survey greater in excess of 200m. If, for example, the first 1 mile of a road has 3 parking spaces parents will not park 1.5 miles away they will double-park and obstruct the road much closer to the school.

RPS also fail to understand that once a reasonable and rational application of the LM is agreed between the applicant and the Authority both parties are bound by it. It is quite clear from the traffic officer's report to committee, corroborated by other documents in our possession, that the Authority agreed the application of 200m for the reasons set out above and also in line with Bromley precedent for other infant aged educational establishments. RPS should not have presented 500m survey data and whilst the traffic officer may not have realized the error the Authority should have taken remedial action once and at whatever point the error was pointed out.

**Educational Need.** The education officer's narrative in the appendix continues to be selective and in parts contradictory and erroneous in the vein of earlier reports.

Turning first to the narrative appended to KEPA's highlighted first statement. In paragraph 2 it states that the primary relevant information in determining educational need for a school is subsidiarity. First assess the immediate local need, then need for places in the relevant planning area and then the relevance of contiguous planning areas based on the proximity of the school to the boundary. We should point out this was not the Authority's recorded position at the time of the temporary school application. At that time because PA2 was in equilibrium and PA1 in deficit the Authority took a contrary position to that now

recorded. Paragraph 3 goes on to quote recruitment radials in September 2015 (post-decision statistics) from a selection of just 4 primary schools (Bromley Road 0.682 miles, Clare House 0.327 miles, Marian Vian 0.624 miles and Unicorn 0.593 miles). Paragraph 4 then quotes home to school travel and transport guidance - statutory guidance for Local Authorities, July 2014 (DfE) which sets a statutory walking distance of 2 miles for under 8 year olds or a public transport journey of upto 45 minutes each way. And then paragraph 5 concludes that "based on the central location of Harris Beckenham in PA2 and distances involved in accessing schools in PA1 as unreasonable, in this instance we believe using PA2 as the primary data set provides the most robust basis for assessing the need for the school." The details set out in paragraphs 2-4 entirely undermine the conclusion in paragraph 5. As we set out below there are a number of schools well within the 2 miles/45 minutes public transport limits quoted which have recruitment radials far in excess of Manor Way. The policy statement in paragraph 5 of how educational need for this school was assessed will provide further evidence to the planning court of the asserted mis-direction.

KEPA has surveyed all of the households in Manor Way and Kelsey Way and on the principal of subsidiarity above: no households are in need of a place in Manor Way and Kelsey Way and as such there is no immediate need. Pushing to the next phase of subsidiarity we can see from the September 2014 figures (the most up to date figures at the point of the education report for this application) the radial recruitments as follows: Balgawan 0.88 miles, Bromley Road All miles, Churchfields 1.01 miles, Clare House 0.46 miles, Harris Kent House 1.01 miles, Marian Vian 0.45 miles, Worsley Bridge All miles, Oak Lodge 0.86 miles and Unicorn 0.46 miles. A cartogram using these radials illustrates that all households in the area of the school are already served and that there is no unmet need at the point of the planning committee meeting. Deploying the Authority's policy statement on needs assessment above it is evident that all of the schools above fall well within the 2 mile/45 minute limits above and their radials illustrate they are catering for all local need.

Paragraph 6 presents some statistics in respect of PA2 projected need and supply of places but these statistics are not drawn from the January 2015 PDS tables so we are unable to comment.

Paragraph 7 moves on to consider the January PDS statistics for PA1&2 as a joint planning area but again obfuscates the position. It states that 2015/16 shows 20 surplus places but these places include 60 Harris Beckenham places, deferred opening to 2016 of Crystal Palace primary and 30 bulge places at Stewart Fleming and James Dixon schools. That is a purposefully selective account because it takes the wrong year (2015/16) and includes the 5% uplift for choice. The correct year is 2017/18 because the temporary school places already exist for 2015-17 so it is for 17/18 year we must discern need. Taking the relevant 2017/18 year and not including the 5% uplift we find 645 places in PA1 with 577 need and a 68 surplus and in PA2 we find 450 places with 429 need and 21 surplus. In sum there is 89 surplus. When we strip out 60 Harris beckenham places as the temporary school desists in that year there remains +29 surplus. However, the Education Department spin the figures the Planning Court will

discern the objective factual picture of need as opposed to policy uplift for choice and the Authority's selective inclusion of some places and exclusion of other places in an inconsistent manner. The deferral of Crystal Palace primary to 2016 is well before September 2017 when Harris temporary school ends. On the point of 30 bulge places at Stewart Fleming and James Dixon the narrative fails to mention that in September 2014 (the last available figures) Stewart Fleming recruited from a radial of 0.86 miles and James Dixon for All Miles (ie) from within the whole of Bromley.

In the final paragraph the report states that the GLA roll projections exclude 8% of pupils who opt for private education. We have it on the authority of Ben Corr, Demography Manager at the GLA that this is not the case. The GLA figures do not disaggregate pupils opting for private education. We suggest your education colleagues re-check this point with the GLA.

Turning to the comments appended to the second KEPA highlighted statement. The report argues that it was right and reasonable for the Authority to exclude the approved Langley primary school 60 places in its assessment of need to the planning committee because (i) although it acknowledges it can open on prescribed temporary sites without planning permission it may find it difficult to find a site (ii) the wider planning authority's time-line of consulting on the new Local Plan could theoretically end up in a public enquiry and therefore affect the Langley schools ability to locate the primary on its site. It is disingenuous to pray-in-aid the wider local plan process as a reason against including Langley primary the statistics. The Authority is aware of the current reserved policies in the extant UDP and the treatment of those policies as the Authority rolls out the new Local Plan. It is aware of the siting of new secondary Beckenham Academy sponsored by Ravensborne school sited temporarily on its site. And it is aware Bromley's extant planning policies would not prevent temporary location of Langley primary on the Langley site or alternative site.



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