

OUR REF: 7145/HJD/DW/301301393

9 September 2016

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Dear Mr Thomas,

Proposal to close Y Berwyn, Brio Tegid and Beuno Sant Schools

I write on behalf of our client the Diocese of St Asaph consequent on your publication of a statutory notice to close Beuno Sant School and other schools, and purporting to establish a new VC Church in Wales school on the site of Ysgol Y Berwyn, and in the light of correspondence with our client subsequent to the decision taken by your authority to move forward with these proposals. This is in part a response to the email sent on your behalf to my client on August 15th. The Diocese has attempted to address with you the issues in respect of the site of Beuno Sant on a number of occasions and has concluded that our formal intervention on its behalf is now necessary.

Our client is supportive of your policy intention to close the listed schools and to have established a new all-age VC Church in Wales school. Indeed it is eager to work with you to achieve this.

However it has consulted us in respect of your authority's Notice, its decision and the subsequent correspondence and I am consequently writing under instruction from the Diocese to alert you to serious issues that arise from the manner of your publication and from what

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appear to be your present intentions in implementing the proposal. I also make some proposals as to a positive way forward.

As background I should say that we advised all the Church in Wales' dioceses last year on the matter of the promotion of new Church in Wales Voluntary schools under the provisions of the Schools Standards and Organisation (Wales) Act 2013 and had correspondence at that point with Welsh Government officials in respect of our concerns. I attach the technical paper that I prepared at the time in order to set out for you the details. In this letter I simply summarise the position.

Officials appear to have taken the view that the SSOWA enabled local authorities to promote new voluntary schools with a religious character. The attached paper sets out the reasons why this cannot or should not be so. Mary Davies for the Assembly agreed at that point that (while reserving her position on the substantive legal issues) it should as a matter of practice be for the relevant diocese to propose any new voluntary school that was going to have a Church in Wales religious character. However in this case your Notice makes it clear that you propose to establish such a school. This is not acceptable or within your powers. The diocese of St Asaph will not be able to consider such a school so promoted as a Church in Wales school. Nor does your authority have the power to have it designated as such. Your notice should have made it clear that the diocese would promote the new school. Indeed the practice heretofore has been for such notices (which are frequent across England/Wales as a whole) to be issued and signed jointly by the Local Authority and the local diocese. The technical reasons for this are all set out in the attached paper and I therefore will not repeat them here.

I do not myself see any solution to this other than the issuing of a revised Notice correctly worded and jointly signed. However, I would be very willing to consider some other solution if you have one to propose.

In addition, I understand that you are proposing that the existing site of Beuno Sant, despite being as I understand it within the same complex as Y Berwyn and (while having its own access) being to a considerable degree embedded within it, will not form part of the new school site.

If this is so then I think I should advise you as to the consequences and propose a solution.

The consequence will be that the site of Beuno Sant will revert to the heirs of the original donors (who I believe are a local family) who will in turn be immediately free to deal with it or dispose of it as their private property. The consequence (if my information is correct) is that you could come to have private housing or some other development intermingled with your new school. This seems most undesirable. Also this course of action would mean that the value of the existing Beuno Sant site would be lost both to the trustees and to you as a local authority. The latter seems remiss: the former is unacceptable. For a local authority to force site trustees into a position where their private value is unnecessarily reverted is most improper. My clients would have to insist that your authority recompensed them for the charitable value lost through your deliberate and unnecessary action.

There are two ways forward that remove this problem. The first is that you simply take advantage of the fact that the Beuno Sant site is already contiguous to the Y Berwyn one and include it in the site of the proposed new school. The rest of the new site would then be transferred (as will be your statutory obligation) to the trustees and no reverter will be triggered. The asset remains in use for its proper charitable purpose.

The second option is that (if you are clear that the Beuno Sant site really is surplus to the needs of the new school) you agree that the trustees may sell the existing site on the open market with a sale agreed before the school moves. This defeats reverter and when you convey the new site to the trustees you will become entitled to those proceeds of sale (less costs). This will give your authority a capital receipt to set against the costs of the new school. It is also exactly in accord with statute.

The diocese would prefer the first of these options and it surely seems the most sensible given the local geography.

I note that your authority has also decided to review the new school arrangement two years after it opens. That is a matter for your authority but I feel that I should point out:

- (1) that your authority will none the less have an immediate statutory duty to transfer the new site of Y Berwyn to the diocesan trustees as soon as the school opens. There can be no question of this being delayed for two years; and
- (2) should any decision be taken at the 2-year review to remove the Church in Wales character of the school it would have to be closed and another new school opened.

Statute prevents any school gaining or losing a religious character. It must close and a new school be opened. If that happened, the trustees' land could not be used for a future non-church school and although it would be open to Ministers to direct that the Y Berwyn site could be used for a non-church school (since it will be publicly funded land) the existing Beuno Sant site cannot be directed since it is not publicly funded land under the statutory provisions.

I am sorry that this letter brings you problems. However my clients are very anxious to offer solutions and I have drafted above what I believe them to be. The diocese will work with you to solve the problems but it cannot allow the proposal as set out in the Notice and your apparent intentions in respect of the existing Beuno Sant land to stand.

My clients would be very willing to discuss a way forward and I should be very glad to discuss the technical issues with your legal advisers if you wish to challenge the interpretation set out in this letter and in its attachment. I understand that the provincial Church in Wales officer for

schools is taking up the issues set out here with Assembly officials. No doubt they will be in touch with you in due course.

Yours faithfully,

PP.



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