



# Choice? What Choice?

Supply and demand in English education

Eleanor Sturdy and Sam Freedman

---

# Choice? What Choice?

Supply and demand in English education

Eleanor Sturdy and Sam Freedman



Policy Exchange is an independent think tank whose mission is to develop and promote new policy ideas which will foster a free society based on strong communities, personal freedom, limited government, national self-confidence and an enterprise culture. Registered charity no: 1096300.

Policy Exchange is committed to an evidence-based approach to policy development. We work in partnership with academics and other experts and commission major studies involving thorough empirical research of alternative policy outcomes. We believe that the policy experience of other countries offers important lessons for government in the UK. We also believe that government has much to learn from business and the voluntary sector.

#### **Trustees**

Charles Moore (Chairman of the Board), Theodore Agnew, Richard Briance, Camilla Cavendish, Richard Ehrman, Robin Edwards, George Robinson, Tim Steel, Alice Thomson, Rachel Whetstone.

---

---

## About the authors

### **Eleanor Sturdy**

Eleanor Sturdy read Chemistry at Somerville College, Oxford. After graduating, Eleanor worked in investment banking, before broadening her experience to general management with McKinsey & Co. She has been involved in the education sector for the past five years, initially covering educational philanthropy during the start-up phase with New Philanthropy Capital, where she co-authored *Making Sense of SEN* (2004). This meant developing a general knowledge and understanding of the education system, including the interfaces between public, private and voluntary sectors. She has worked with several education funding bodies on their grant-making programmes, and also with schools looking at

their management and leadership strategy. Eleanor was Development Director with United Learning Trust for two years and is a Fellow of the RSA and a Trustee of the St Pancras Welfare Trust.

### **Sam Freedman**

Sam is Head of the Education Unit at Policy Exchange. He achieved a first class degree in History from Magdalen College, Oxford. After completing a Masters degree in International History in 2004, Sam joined the Independent Schools Council as a researcher. He left three years later as Head of Research, having also completed a second Masters degree in Public Policy and Management at Birkbeck. Sam joined Policy Exchange in September 2007.

---

© Policy Exchange 2007

Published by  
Policy Exchange, Clutha House, 10 Storey's Gate, London SW1P 3AY  
[www.policyexchange.org.uk](http://www.policyexchange.org.uk)

ISBN: 978-1-906097-11-0

Printed by Heron, Dawson and Sawyer  
Designed by SoapBox, [www.soapboxcommunications.co.uk](http://www.soapboxcommunications.co.uk)

---

## Contents

Acknowledgements	4
Foreword by David Willets MP	5
Executive Summary	6
Introduction	8
1. The Academies Programme	13
2. Demand and Supply in English Education	23
3. A Fair Competition?	31
4. Planning for the Future	36
Conclusion	43

---

## Acknowledgements

The authors would like to thank James O'Shaughnessy for managing this project for most of its life; Charlotte Leslie for her initial research and David Willetts for his advice and encouragement. We would also like to thank Simon Horner and Ben Ullman for their valuable contributions. Finally, we would like to thank Philippa Ingram for her expert proof reading.

We are also grateful to the following people for agreeing to be interviewed for this project, and to several others who wished to remain anonymous.

Devon Allison, Secondary Schools Campaign in Lambeth and Brixton parent

Gideon Amos, Town and Country Planning Association

Carol Bates, former Principal, Harris CTC

Adrian Beecroft, Apax Partners

David Betton, KPMG

Andrew Billington, Petchey Foundation

Neil Carberry, Confederation of British Industry

Paul Carter, Education Excellence

Martyn Coles, City of London Academy

Chris Cook

Steve Chalke, Oasis Trust

David Clark, Building Development Partnerships

Chris Davies, Policy Exchange

Stephen Dengate, VT Education and Skills

Peter Evans, Prospects

Anthony Fine, White & Case

Cllr Mike Freer, Barnet Council

Christine Ginty, Bryanstone Square

Richard Hardie, UBS

Sir Ewan Harper, United Learning Trust

Lord Harris of Peckham, Harris Foundation

Lucy Heller, ARK Education

Gervas Huxley, Bristol University

Peter Jenkins, Ernst and Young

Deborah Knight, The Haberdashers' Company

Cheryl Lim, Policy Exchange

Mark Logan, Edison Schools

Michael Marchant, The Mercers' Company

Neil McIntosh, CfBT

Cllr Sir Simon Milton, Westminster Council

Thomas Moran, CBI

Richard Morris, The Society of Merchant Venturers

Dr Dan Moynihan, Harris Foundation

Alistair Muriel, Institute of Fiscal Studies

John Nash, Sovereign Capital

Dr Mark Pennington, Queen Mary, University of London

Tom Peryer, London Diocesan Board of Schools

Oliver Piggott, Ernst and Young

Annemarie Shillito, Experian Group Limited

Rynd Smith, Royal Town Planning Institute

Tony Smith, Cambridge Education

Amanda Spielman, ARK Education

Dr Tessa Stone, Sutton Trust

Patrick Watson, Montrose Communications

Richard Williams, New Model School Company

Alan Wood, Hackney Learning Trust

Inigo Woolf, London Diocesan Board of Schools

Robert Whelan, Civitas

Stuart Whitfield, Bevan Brittan LLP

---

## Foreword

By David Willetts MP

*Shadow Secretary of State for  
Innovation, Universities and Skills*

For years, politicians of all hues have focussed on methods of reforming the demand side of the public services, with policy suggestions like tax relief for personal payments and choice mechanisms.

But we have not given equal attention to the challenge of making these choices real. They cannot be exercised without reform on the supply side – making it easier, for example, for good schools to expand or new schools to be created.

As I said in a speech earlier this year “It is as if we were lovingly focusing on the details of exactly what free railway tickets we should hand out to people without tackling the problem that the trains people want to take are full to bursting already, health and safety regulations make it very hard to add extra carriages and planning rules obstruct the building of new track.”

Britain has fallen behind other western countries as they have pushed ahead with such an agenda which we have ignored, thereby depriving generations of school-children of important opportunities. The work of Professor Caroline Hoxby, one of the leading experts on school choice, has emphasised the need for schools to be free

to respond to competitive pressures as well as showing how great the prize of real reform can be.

I first encouraged Eleanor Sturdy to undertake this research because of the importance of tackling the barriers which get in the way of the creation and expansion of new schools. Tackling issues such as planning law, VAT, surplus place rules and capital allocation are important if we are to deliver real reform in education.

For too long, the debate has been about how we can divide a limited number of places in adequate schools. We need to think about breaking the strictures which prevent real dynamism in British education and the creation of more good school places.

The next great battle over British educational reforms will not be about central control and direction, but how we free schools to respond to local demands. Supply-side reform of the public services will be one of the great political issues in years to come and I am delighted that Policy Exchange has produced this excellent pamphlet as one of the first serious contributions to this debate.

---

## Executive Summary

For nearly twenty years parents have been allowed to choose which schools their children attend. Or that is the theory. In practice, hundreds of thousands are denied their first choice and their children remain trapped in inadequate schools. School choice has failed to deliver because there is no market in education within which it can operate. Restrictions on the supply of places in good schools mean that school providers cannot respond to parental preferences as they would do in a normal consumer market.

“ In a free market, if a good school is oversubscribed either the school will expand to meet rising demand or another good school will open nearby ”

In a free market, if a good school is oversubscribed either the school will expand to meet rising demand or another good school will open nearby; failing schools will lose pupils and be forced to close. Sadly, this is not what happens. Instead, the parents of children unlucky enough not to get a place at a good school have to settle for second, third or fourth best. A choice in which the only option ends up being the failing local comprehensive is no choice at all. The supply side of the education market is so constrained by administrative and even physical barriers that few new suppliers manage to surmount them. These barriers are the focus of our report – why they occur and, most importantly, how they can be removed.

Fortunately, a supply-side revolution does not require radical or contentious new legislation. Reforms passed under Tony Blair (the academies legislation of 2002 and the Education and Inspections

Act 2006) provide potential new suppliers with a number of routes to enter the state system. However, the Government has been incredibly cautious about turning the spirit of this legislation into reality. It has not been prepared to take on vested interests in the form of local authorities and teacher unions, which, unsurprisingly, are unwilling to see their traditional powers weakened. By contrast, the alternative school providers whom we spoke to in the course of our research feel that support is often lacking. So far the Brown administration seems hostile to the idea of choice – the word itself has disappeared from ministerial speeches and articles. Yet the laws remain on the books and no alternative policy approach has been provided.

We begin by looking at the academies programme, the only concrete example of supply-side reform under Labour. Although still in their early days, academies are proving successful in terms of results and are popular with parents – success that can be largely attributed to their independence. Unfortunately, that independence is being eroded. The Government has forced the academies back into the National Curriculum and, more worryingly, it is encouraging local authorities to co-sponsor academies, which entirely defeats the purpose of providing greater diversity. The Government should make it much easier for new academies to be set up. For a start, it should abolish the £2 million sponsorship fee and allow existing schools to transfer to academy status if they have an appropriate sponsor.

Next we examine the amount of unmet demand for good school places, which is a direct consequence of constricted supply. The pattern that emerges is one in which the best schools are vastly oversubscribed, the number of parents not getting their

first choice is rising steadily and the number of admissions appeals is unacceptably high. At the other end of the scale, failing schools are naturally undersubscribed, but their surplus places are used as an excuse to forbid the expansion of successful schools and the entrance into the market of new education providers. This could be prevented if only surplus places in good or outstanding schools were taken into account. Much more transparency is required. Data about the level of unfulfilled demand should be published, so that local authorities can be held fully accountable for the lack of places in good schools. Where provision is found to be inadequate, local authorities should be compelled to plan for new schools provided by new suppliers and/or academies.

We also evaluate the process for setting up a new school. The Education and Inspections Act 2006 states that a competition should be held for would-be providers with the aim of increasing diversity of supply, but the guidance is full of loopholes. An authority can avoid a competition if it co-sponsors a new academy, while the only competition to take place so far was heavily skewed in favour of the local authority bid. We recommend that authorities should not be allowed to co-sponsor academies and that the competition rules should be revised. Academies should be included in the

competition process; new providers should be able to employ someone at government expense to prepare their bid; the local authority should not be in charge of the consultation if it is participating in the competition; and schools adjudicators should be drawn from a range of backgrounds rather than just the education establishment.

Finally, we turn to the physical barriers to supplying new schools. Local authorities are selling off land that has been set aside for public services (D1 land) for private housing development. We believe this sell-off is based on mistaken demographic assumptions. Although birth rates declined in the late Nineties and the number of school-age children has fallen, this trend has now reversed. But because there are surplus places at present, schools are being closed and their sites sold. Without some excess capacity in the system it will be very difficult to respond to rising demand in the future. We recommend that land previously used for educational purposes should be protected, as school playing fields currently are. To make it easier to provide new school sites, mixed-use schemes involving the private sector should be encouraged, and local authorities should not deny change-of-use planning permission to new independent schools if that would ease demand on the maintained sector.

---

## Introduction

You may not realise this – but we have school choice in England. Since the Education Reform Act 1988 parents have been able to list their preference of schools. No one is guaranteed a place at his first choice, but then no system could ever guarantee this. The problem is not the absence of choice but the absence of good schools to choose from. The “bog-standard” comprehensive is still all there is for far too many communities. Yet despite the Government’s occasional and cautious support of supply-side reform, the challenges to setting up a new school in order to provide choice remain legion. This report makes a series of recommendations that if implemented would offer parents real choice.

The argument for choice and diversity within education has been made convincingly in numerous other studies. We will briefly run through these arguments in this introduction but our purpose here is to provide practical recommendations to free up the supply side using, in the main, existing legislation. The Education Act 2002, which allows for the setting up of academies, and the Education and Inspections Act 2006 (EIA) provide many of the mechanisms necessary for a supply-side revolution. But the spirit of these Acts has been largely ignored by those in charge of school planning. This is largely the responsibility of local authorities (LAs), who are still responsible for school organisation in their areas. That they have not embraced the legislative changes in favour of diverse supply is unsurprising –it was naïve of the Blair Government to expect that local authorities would welcome alternative suppliers on to their patch. Many of the recommendations in this report focus on both tightening the rules and broadening their application so that the rhetoric of the EIA is borne out in practice.

**Chapter one** looks at the academies programme, which represents the Government’s

tentative first steps in introducing genuine diversity of provision to the system, at its benefits and at the growing threats to its future. We then suggest how the programme could be expanded to make the freedoms it offers more widely available.

**Chapter two** examines why the current system is so inflexible. We establish the level of demand for new good school places and investigate why LAs seem so slow to respond to this demand. We discuss ways to trigger automatically the building of a new school if there are not enough good school places in a given area.

**Chapter three** looks at the process for deciding who runs a new school on the rare occasions when local authorities are pressed into action. We believe that it is too easy for them to avoid their statutory duty to increase diversity and that the levers of competition are too weak.

Finally, **Chapter four** focuses on the shortage of suitable land for building new schools. We provide evidence that local authorities are acting in a short-sighted manner by selling off school land for housing despite forecasts of population growth in ten to fifteen years. Already in some LAs there is a serious lack of land for new schools and we believe that this will get worse without action from central government.

It is important to remember that all three main parties claim to support school choice. Although we have concerns that the Brown administration is retreating from the Blairite reform agenda, it is legislation introduced by successive Labour governments that would enable many of the reforms we suggest. A genuine consensus in the House of Commons should

lead to genuine choice for parents. It is the barriers we identify in this report that are preventing this from happening. Without the reforms recommended we believe that choice will continue to exist in name only.

Choice and Competition in Education  
 Since the publication of *The Role of Government in Education* by Milton Friedman in 1955, school choice has appeared regularly on the political radar. The principle is simple: competition between education suppliers for students will increase the overall quality and efficiency of the system. As an idea it has been through cycles of popularity and unpopularity. However, in the early 1990s large-scale policy experiments in Sweden and America provided a factual base for supporters of choice. Since then numerous analyses have shown that choice does have a positive impact – though these are always hotly contested by opponents of choice, whose opposition is typically focused on the potential for inequality of opportunity.

A recent report, *Public Services at the Crossroads*, published by the Institute for Public Policy Research, claims that “as a narrative of reform ‘choice’ has been particularly unsuccessful: it has alienated the workforce without capturing the imagination of the public”.<sup>1</sup> To some extent this is true. The teacher unions have always been strongly opposed to increased competition between schools because of the perceived additional risk for their members. Furthermore “choice” is a pretty abstract concept for parents to grasp. In America the abstractions of choice have attached themselves to the more solid reality of the race debate: it is black and Hispanic parents who have seen choice as a way to level the playing field in an otherwise unequal system. In England, however, the concept has not attached itself to any concrete example of unfairness in the system. Parents can support the anti-choice

position that all that is needed is one “good local school” without necessarily understanding the counter-argument that “the good local school” is an end not a means and choice is the best mechanism for delivery.

Despite this, though, all three political parties have used the language of choice over the past few years and all three have cited Sweden and the US as positive examples of system change. In 2004 Tony Blair asked: “What are the key elements if we are really to put the public at the heart of public services?...A continuous drive to increase the scope and scale of choice available to public service users. Whenever the expansion of choice has been proposed in the public sector there have been the doomsayers arguing that such freedoms would be exploited by the assertive few at the expense of everyone else. Each time these predictions have been wrong.”<sup>2</sup> During his campaign for the leadership of the Conservative Party David Cameron announced that “the Conservative party must be the party of real school choice for all, recognising that schools should be accountable to the people they serve, not bureaucrats in the town hall or Whitehall.”<sup>3</sup> At the 2007 Liberal Democrat Party conference education spokesman David Laws argued: “If we believe in empowering parents and pupils, part of that empowerment is choice. Choice is not a dirty word: it is one of the essential freedoms in a liberal society.”<sup>4</sup>

Gordon Brown and his Secretary of State for Children, Schools and Families, Ed Balls, have been noticeably less prepared to use the language of choice and diversity – in the next chapter we look at how this negative attitude is impacting on the academies programme. However, they have offered no alternative narrative for school improvement and the rhetoric of choice enshrined in the EIA is still the basis upon which local authorities are supposed to act. Our concern is that a lack of will at

1. Brooks R et al, *Public Services at the Crossroads*, (IPPR, 2007), p 8

2. Blair T, Speech at the *Guardian* Public Services Summit, 29 January 2004; [www.guardian.co.uk/society/2004/jan/29/comment.publicservices](http://www.guardian.co.uk/society/2004/jan/29/comment.publicservices)

3. Cameron D, 9 September 2005; <http://politics.guardian.co.uk/toryleader/story/0,,1566686,00.html>

4. Laws D, Speech to Liberal Democrat Conference, 19 September 2007; [www.libdems.org.uk/conference/brighton-2007-david-laws-speech.7744.html](http://www.libdems.org.uk/conference/brighton-2007-david-laws-speech.7744.html)

the top will prevent the spirit of the 2006 Act from becoming practice, leaving – in the absence of any alternative programme – stagnation and stasis.

#### Choice and Competition: An International Perspective

Supply-side reforms have gone furthest in Sweden and the US. The evidence from these countries suggests that the introduction of independent or charter schools improves the performance of all schools, including existing state schools.

Under the Swedish system, state and independent schools receive public funding on more or less equal terms. Provided that they fulfil certain basic requirements, all kinds of schools are eligible, including religious schools and schools run by businesses for profit. There are really only two serious limitations to the operation of independent schools: they must pledge not to charge students an additional tuition fee and they cannot select students on the basis of academic performance. A recent comprehensive analysis of the effects of school choice in Sweden found that the effect on average grades of a 10 percentage point increase in the private school share is just below 1 percentile rank point. The study also found that “the individual gain from attending a private school (the private-attendance effect) is estimated to be only a small part of the total effect, about 0.1 percentile rank point. Thus, the total achievement effect is mainly driven by other peoples’ choice of private school in the municipality.”<sup>5</sup> Another analysis of the impact of school choice reform found no evidence at all that competition diminishes the quality of state schools.<sup>6</sup>

In the US, a number of states have run relatively small-scale voucher programmes allowing selected children to use state money to attend private schools. These have come under sustained attack from the American judiciary, despite numerous

studies showing that public schools subject to voucher competition make greater academic gains than similar schools not facing competition.<sup>7</sup> More impressively, since 1991 40 states plus Puerto Rico and the District of Columbia have enacted charter school legislation. There are now over 1.1 million children studying at over 4,000 charter schools nationwide. These schools are similar to English academies in being independent state schools run by a diverse range of sponsors. Like academies they have considerably more freedoms than other state schools but are not allowed to charge fees or select academically. Unlike academies they receive less funding per capita than other state schools (an average of 78 per cent).<sup>8</sup> Over the past six years there have been 70 reports on the impact of charter schools. Forty of these make some attempt to analyse student performance over time. Of these, 21 found that overall gains in charter schools were larger than other schools in their districts. A further ten found that certain categories of charter school produced higher gains (for example, elementary schools in Arizona). Five found comparable gains with other schools and only four found that other schools allowed for greater student improvement.<sup>9</sup>

Even those who deny the overall efficacy of charter schools would find it difficult to ignore the incredible success of certain groups of schools under particularly innovative sponsors. For example, from running one Houston school in 1994, KIPP (Knowledge is Power Programme) now runs 57 charter schools educating 14,000 children across 17 states. Over 90 per cent of these children are black or Hispanic and 80 per cent are eligible for the American equivalent of free school meals. The schools’ results are astonishing. In the 2005-06 school year, 100 per cent of KIPP eighth-grade classes outperformed their district averages in both mathematics and reading/English language, as measured by state

5. Böhlmark A and Lindahl M, “The Impact of School Choice on Pupil Achievement, Segregation and Costs: Swedish Evidence”, IZA Discussion Papers No 2786, pp 41-42, 2007; [www.iza.org](http://www.iza.org)

6. Sandström F and Bergström F, *School Vouchers in Practice: Competition Won't Hurt You!* Research Institute of Industrial Economics, 2002

7. For an overview of these studies see Forster G, *Monopoly vs Markets*, Milton Friedman Foundation, p 42, 2007.

8. National Alliance for Public Charter Schools, 2007 Charter Dashboard; [www.publiccharters.org/content/publication/detail/2147/](http://www.publiccharters.org/content/publication/detail/2147/)

9. Hassel B et al, *Charter School Achievement: What We Know*, National Alliance for Public Charter Schools, p 9, 2007

exams.<sup>10</sup> KIPP has recently received \$65 million from a number of donors to open a further 42 schools in Houston – showing how a system with genuine supply-side flexibility responds to successful innovation from new suppliers.<sup>11</sup>

### The Rising Tide

The economist Caroline Hoxby of Harvard University, the leading researcher into school choice, has famously concluded that “a general increase in school productivity could be a rising tide that lifted all boats and the gains and losses from reallocation might be nothing more than crests and valleys on the surface of a much higher water level.”<sup>12</sup> Professor Hoxby’s research has found that the three essential elements of successful school choice reform are: independent management, per capita funding that follows the pupil to the chosen school and a responsive, fluid supply side.<sup>13</sup>

In England there has been some movement on the first two elements in recent years – and research suggests that the changes have made a difference, though they have not gone far enough. There is plenty of evidence that Hoxby’s first essential element, independent management, contributes strongly to school performance. Research from the Sutton Trust confirms that independent fee-paying schools in England perform better than state schools even when the economic background of their pupils is taken into account, and it attributes this to the autonomy enjoyed by the leaders of such schools.<sup>14</sup> Research from the Specialist Schools and Academies Trust (SSAT) confirms that the independence of headteachers in the city technology colleges (CTCs) was an important element of their success. The independence of academies is cited as a key driver of their early success by PricewaterhouseCoopers (PwC) in its detailed evaluations of the academies programme. (This is discussed in more detail in

Chapter one).<sup>15</sup> However, the majority of schools remain highly regulated environments, absorbing valuable management time.

Hoxby’s second essential element, per capita funding, supposedly exists in the English schools system. We regularly hear ministers talk of funding in terms of “per pupil” amounts. However, in reality funding for community schools, and voluntary-controlled schools, remains in the control of their LA and so they rarely receive the per capita sum announced by the Treasury. Councils make local decisions based upon their own staffing and overhead costs and other developmental priorities, frequently leading to delays for the schools and uncertainty in their annual budget settlement. As Hoxby explains, a system that does not have funding that relates to the pupil will not be responsive to demand.<sup>16</sup>

“ The independence of academies is cited as a key driver of their early success by PricewaterhouseCoopers in its detailed evaluations of the academies programme ”

So the first two of the essential elements identified by Hoxby, independent management and per capita funding, are partially, haltingly, happening in English schools, but the third, a flexible supply side, remains almost entirely constrained. This means that education reforms that are directed towards improved choice for parents may disappoint because they do not allow the full effect of the choice decision to be exercised and they do not result in an expansion of the number of good schools. As research from CentreForum explains: “Choice requires an excess, as well as a diversity, of supply. Meaningful choice requires that supply to be of high quality. Until such time as the supply side has been liberalised, those pupils currently in under-

10. For more information see [www.kipp.org](http://www.kipp.org)

11. “Charter School Effort Gets \$65 million Lift”, *The Washington Post*, 20 March 2007; [www.washingtonpost.com/wp-yn/content/article/2007/03/19/AR2007031902027.html](http://www.washingtonpost.com/wp-yn/content/article/2007/03/19/AR2007031902027.html)

12. Hoxby C, “Rising Tide”, *Education Next*, Winter 2001

13. Ibid

14. Sutton Trust, *Blair’s Education, an International Comparison*, June 2007

15. PricewaterhouseCoopers, *Academies Evaluation 4th Annual Review*, DCSF, 2007

16. Policy Exchange will be releasing a report in 2008 calling for a thorough overhaul of the school funding system

performing schools will find it difficult or impossible to access a place at a higher performing school.”<sup>17</sup>

In comparison with several international examples, the English system remains constrained by regulatory and physical barriers.<sup>18</sup> In a comprehensive review of the research evidence on school choice, the Social Market Foundation confirmed that school choice reforms can lead to improved school quality, but that the English system is too constrained on the supply side to be able to respond to the parental demand that is generated by choice: “Contestability under parental choice can work to improve the quality and the efficiency of state schools, given the right policy conditions. This is the conclusion of a large number of the studies looking at school choice. There is a substantial amount of research relating to

school choice, in particular on the competitive effects of school choice policies on state schools. The UK has combined choice policies on the demand side with little flexibility on the supply side, which, as a result, has had little scope for responding to parental preferences. In addition the number of school places has declined over time. Flexibility and capacity are therefore two possible explanations for why the results have been less positive than those from countries in which overt selection has been restricted and, importantly, choice has been accompanied by new forms of provision.”<sup>19</sup>

This report will examine the major hurdles that need to be overcome in the quest to open a new school, together with potential reforms that would free up the system for operating schools in a more flexible way.

17. Marshall P, *Tackling Educational Inequality*, CentreForum, 2007

18. See *School Reform: A Survey of Recent International Experience*, DfES, June 2006; “Free to Choose, and to Learn”, *The Economist*, 3 May 2007; Hoxby papers on school choice programmes in US, NZ, Sweden and Holland: [www.economic.harvard.edu/faculty/hoxby/papers.html](http://www.economic.harvard.edu/faculty/hoxby/papers.html)

19. Williams J and Rossiter A, *Choice: the Evidence. The Operation of Choice Systems in Practice, National and International Evidence*, The Social Market Foundation, October 2004

---

# 1

## The Academies Programme

Academies are widely seen as the education success story of the Blair years. Early analysis of results shows faster than average improvement and they have proven very popular with parents. They have also been widely criticised, but usually for the considerable expenditure on new buildings that has come hand-in-hand with an academy project. In this chapter we review the story so far: the early successes and the current fears that the Brown Government is subverting the original purpose of academies by increasing local authority involvement. We look at the law governing academies and show that the programme could go much further than it does without further legislation. We argue that if freedom is good for some schools then surely it is good for all schools.

In order to obtain an up-to-date view of the programme and its operational constraints we interviewed 17 sponsors representing 50 academies. We asked sponsors about the help or hindrance that they encountered as well as the changes that they would make to improve the situation. Our findings are summarised throughout the chapter.

### The Story So Far

Academies are independent schools with state-funding. The department website describes them as follows: “Academies are publicly funded independent schools that provide a first class free education to local pupils of all abilities. They bring a distinctive approach to school leadership drawing

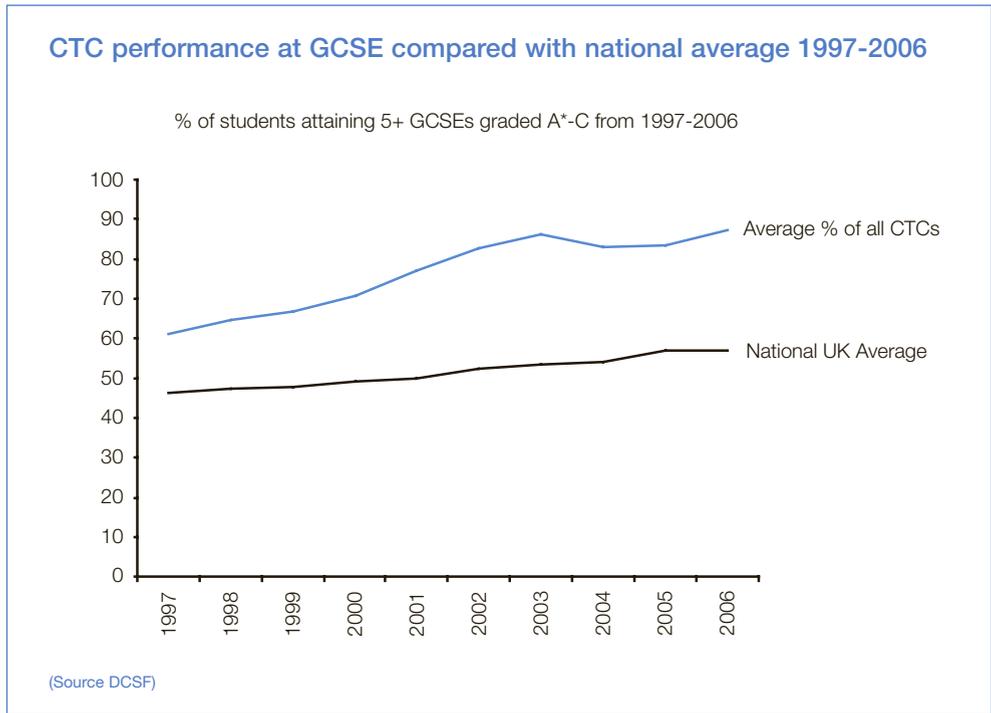
on the skills of sponsors and other supporters. They give Principals and staff new opportunities to develop educational strategies to raise standards and contribute to diversity in areas of disadvantage. They are all ability schools established by sponsors from business, faith or voluntary groups working in highly innovative partnerships with central Government and local education partners. The Department for Children, Schools and Families (DCSF) meet the capital and running cost for the academy in full.”<sup>20</sup>

So far academies have primarily been used to replace failing schools – though there is no legislative reason for limiting academies to areas of disadvantage. They fulfil two of Caroline Hoxby’s essential elements of school choice reform: independent management and per capita funding. As such they have been recognised as a serious attempt to increase diversity of supply in the state sector and many supporters have made enormous contributions of time and money to enable academies to be set up. There will be 82 academies open by September 2007, with a further 100 projects in the pipeline.<sup>21</sup> The Government is committed to opening 200 by 2010 and, so far, 400 in total.

Academies are effectively an extension of the city technology colleges (CTCs) that were set up during the 1980s and 1990s by the last Conservative administration. Fifteen CTCs were established in highly deprived areas from 1988 to 1993 and they have all been successful in terms of their exam results since, as the graph below

20. [www.standards.dfes.gov.uk/academies](http://www.standards.dfes.gov.uk/academies)

21. Source: DCSF Academies Division



shows. The blue line is the average of the 15 CTCs’ GCSE results over time and the black line is the national average. The improvements did not all happen quickly or in a straight line, but the passage of time has shown that this supply-side education reform was successful.

Four of the original CTCs (BRIT, Macmillan, Dixons and Leigh) are now in the top 50 English schools in terms of “contextual value added” meaning that they are out-performing expectations when deprivation is taken into account. CTCs have now mainly converted into

academies in order to secure their future funding.

The early signs are that the academies are having a similar impact on achievement. PricewaterhouseCoopers’ evaluations together with recent National Audit Office analysis have confirmed that there are strong signs of progress and that standards are improving. Where an academy has replaced a failing school, public exam results are included in the statistics, but some brand new academies have not yet taken GCSE exams under their new management and are still filling up with students.

### Summary academic performance for academies:<sup>22</sup>

		2005	2006	Change
% Pupils scoring 5+ A*-C at GCSE	Academies	34	40	+6
	National av.	56	58	+2
% Pupils scoring 5+ inc Eng and Maths	Academies	16	22	+6
	National av.	43	45	+2
Contextual Value Added (KS2 to KS4)	Academies	na	1018.2	
	National av.	na	1000.5	
Average advanced level points	Academies		541	
	National av.		722	

22. *The Academies Programme*, National Audit Office, February 2007

Academies' results have improved when compared with their predecessor schools. Taking the GCSE results of 20 academies, 40 per cent achieved five or more GCSE at grades A\*-C, which compares well with Fresh Start schools (35 per cent) and is catching up with Excellence in Cities schools (47 per cent), although still below the national average (58 per cent). Given the short time period of the programme and the intense difficulties of the failing schools that academies have replaced, both the NAO and PwC regard these results as highly encouraging.<sup>23</sup>

The academies' average contextual value added score of 1018 indicates that the academies are making a significant difference in the areas of deprivation where they have been located. (The national average of 1000 is the "baseline" for measuring whether or not a school has achieved better or worse results than expected when socio-economic context is taken into account. Schools are adding value relative to expectations when they score above 1000.)

Performance in academies is rising faster than the national average, starting from a lower base. Crucially, this is being achieved while they are admitting higher numbers of pupils eligible for free school meals (FSM) and with special educational needs (SEN) than both the national average and the average in their catchment areas.

The relative proportion of pupils eligible for FSM has fallen in some academies, attracting criticism that they are not adequately serving deprived areas. This criticism is based on incorrect analysis as several academies have taken over from predecessor schools that were not full. As they now have more pupils than their predecessor schools, the relative proportion of pupils entitled to FSM may fall, while the absolute number on FSM is rising. As the PwC review noted: "There has been an overall increase in the *absolute number* of pupils eligible for free school meals (FSM) in academies. Similar increases in absolute numbers, albeit on a smaller scale, are also evident relation to

English as an additional language (EAL) and special educational needs (SEN)."<sup>24</sup>

The PwC review attributes some of academies' early success to their independence, as well as examples of good practice that are found in many schools, such as behaviour management, focus on attendance and excellent pastoral support, as well as to the improved social mix of the intake.

*"Some of the improvement in pupil performance can be explained in terms of the fact that the social and educational profile of pupils entering academies is improving, and at a rate that is faster than other similar schools. However, there is also clear evidence from the evaluation... that much of this performance can be attributed to individual academies doing things differently, and well, on the ground... including using a number of critical success factors, or 'enablers', which are key features of the academies initiative and which, in a sense, distinguish academies from other schools. Such enablers include academies' independent status, governance and leadership, all of which are being used to various degrees by academies to improve pupil performance."*<sup>25</sup>

The report is clear that, "Independent status provides academies, in principle, with the freedom and flexibility to work outside traditional boundaries by using different approaches to curriculum, admissions, timetabling, recruitment, staffing and governance." PwC found that independence was being used in the following ways:

- More academies are increasing the number of teaching hours by extending the school day.
- Teachers' pay and conditions are being adjusted to accommodate the longer school day.
- There is evidence of a more flexible use of support staff to strengthen learning teams and provide additional support to teachers in order for them to focus on their core duties.

23. PricewaterhouseCoopers, *Academies Evaluation*, 3rd Annual Report, DfES 2006, and 4th Annual Report, DCSF, 2007,

24. PricewaterhouseCoopers, *Academies Evaluation*, 4th Annual Report, DCSF, 2007

25. Ibid

- Curriculum options and pathways are being significantly changed in some academies.
- Some principals are working in partnership with their sponsors to access resources which they report would not have been previously available.

The report concludes: “Independence appears to have given principals, staff, and governors far greater confidence to explore new avenues of funding and new partnerships within the wider community.”<sup>26</sup>

Crucially academies are also extremely popular with parents. All but three of the 42 academies opened last year were oversubscribed – 15,000 families applied and were turned away.<sup>27</sup> One academy had 1,200 applications for just 180 places. When one considers that they have replaced schools that nobody wanted their children to attend this is an extraordinary turnaround. As one academy sponsor told us: “Over 1,000 people applied for 180 places at our academy last year, and 100 of those put in appeals which it took us ten days to process. Whatever the papers say, people want to come to our academies.”

### Academies: the case of Hackney

The London Borough of Hackney is one of the most deprived areas of England. Although significant regeneration is now taking place through both public and private initiatives, it has had a history of educational failure. In August 2002 the local education authority was replaced by a not-for-profit Learning Trust. The trust faced a severe shortage of school places and a school-age population growing at 6 per cent a year. It believed that the academies programme offered a way to fund and build the new schools that the borough needed. A bold strategy was agreed that includes three brand new academies. Among their sponsors are UBS investment bank, the late Sir Clive Bourne and the Jack Petchey Foundation. The two academies that have opened so far are oversubscribed and have attracted enormous parental support. The first indications of success appeared in August 2007, when Mossbourne Community Academy celebrated Key Stage 3 results of 90 per cent, well above the national average of 79 per cent. The academies will have GCSE results from 2009. Hackney’s overall ranking in London (based on the average of all value added indicators) has risen from fifteenth in 2002 to sixth in 2006.

Since the arrival of the academies education standards have been rising throughout schools in Hackney. Teachers comment that the academies have made them take stock, demonstrating how choice and potential competition can “lift all boats”.

#### % of 15 old pupils achieving 5+A\*-C (and equivalent)

	2003	2004	2005	2006	% change
Hackney Average	39.2	45.1	47.2	50.3	11.1
England Average	52.9	53.7	56.3	58.5	5.6

#### % of 15 year old pupils achieving 5+A\*-C (and equivalent) including English and maths

	2003	2004	2005	2006	% change
Hackney Average	26.4	32.1	34.1	36.2	9.8
England Average	41.9	42.6	44.3	45.3	3.4

26. Ibid

27. Ibid

## Are Academies' Freedoms Under Threat?

Tony Blair was a fervent supporter of academies and regularly spoke on their role in the English education system. While Gordon Brown and Ed Balls have not stopped the programme, as some had feared, they have been considerably less positive. Noticeably, Balls has stopped using the phrase “independent state schools” – which had acted as a powerful tagline for the programme. Some of his first decisions involved rolling back the freedoms of academies; and more than this there has been a clear, if subtle, change in the ethos of the programme that threatens its future value. Academies are subject to increasing centralisation and standardisation in building projects, increasing co-sponsorship with local authorities and tighter teaching and curriculum requirements.

Right from the launch of the programme the main teaching unions have campaigned vigorously against academies, especially over any variation in teachers' conditions of employment. As a result, academies are now required to employ only teachers registered with the General Teaching Council, even though this rule does not apply in other independent schools. Ironically, academy sponsors had transferred staff who were not even qualified teachers or registered with the GTC from predecessor schools.

However, the real sea change happened after Brown became Prime Minister. Ed Balls, in his first speech as Secretary of State for Children, Schools and Families, stated:

*All academies now actively collaborate with schools and colleges in their area, just as all schools should co-operate with academies. Currently, all academies replacing local authority schools proceed with local authority endorsement at the feasibility stage, and at the funding agreement stage we already have a duty to consult local authorities and*

*we take their concerns fully into account...At the heart of the innovation in the curriculum that academies make possible is flexibility, which we will maintain for all new academies—built on the platform of the core national curriculum that, as with most existing academies, all new academies will follow in English, maths, science, and information and communications technology.<sup>28</sup>*

This announcement confirmed that local authorities now have a de facto veto over academies. It also withdrew one of their key freedoms— to follow their own curriculum. In line with the consistent opposition of the National Union of Teachers to academies' freedom from local authority control, Steve Sinnott, the NUT General-Secretary, said: “I welcome Ed Balls's statement giving local authorities a greater say in the planning of academies. This is a direction of travel of which I thoroughly approve.”<sup>29</sup> In fact, local authorities' veto over academies is not clearly defined and can be based solely upon an ideological opposition to academies. The London Borough of Tower Hamlets, for example, has refused the offer of an academy with sponsorship from Goldman Sachs investment bank, despite being one of the most deprived areas in the country with low educational performance.<sup>30</sup>

A veto for local authorities immediately constrains the programme since a number of the more ideological authorities do not favour provision of this type. One sponsor that we interviewed found the local authority in Hull (constituency of the former Education Secretary, Alan Johnson) so hostile to its plans, that it has started developing plans elsewhere. Another sponsor expressed concern at the increased role of local authorities: “Where will academies be in the Brown regime? We've heard rumours LEAs will have more control over them. We reject that. We'll work with LEAs, but not for them.”

28. Balls E, speech, *Hansard*, Col 1322, 10 July 2007

29. [www.teachers.org.uk/story.php?id=4052](http://www.teachers.org.uk/story.php?id=4052)

30. <http://news.bbc.co.uk/1/hi/education/6221170.stm>

It is important to note that there is no legislative reason why local authorities should be able to veto an academy. The Education Act 2002 requires only that consultations about the establishment of the school (academy) should be held with:

- (i) the local education authority in whose area the school is to be situated; and*
- (ii) if the Secretary of State thinks a significant proportion of the pupils at the school is likely to be resident in one area of another local education authority, that authority.*<sup>31</sup>

Even where local authorities are prepared to engage with the programme they are increasingly doing so as co-sponsors – which defeats their original purpose: increasing diversity of supply. As of July, 20 academies had been co-sponsored by their local authority.<sup>32</sup> Manchester, Sunderland and the London Borough of Camden, have recently announced co-sponsorship of academies. As we will show in the next chapter at least one local authority has agreed to co-sponsor an academy primarily to avoid having to hold an open competition for providers who wish to build a demographically necessary school. This is a direct perversion of the intention of the academies programme.

Sponsors are certainly alarmed at this trend. One told us “all the sponsors that are involved in the academy we co-sponsor are bemused that an LEA can be a sponsor because often the LEA are part of the problem. The whole point is that academies were to be independent.” The PwC report which, as we saw in the previous section, pointed to the independence of academies as one of the key drivers of their success, noted: “New sponsorship arrangements are emerging, including co-sponsorship by local authorities, which have given rise to issues that need to be further explored in next year’s fieldwork. These include the implications for the independent status of academies.” The report also comments that “changes to

the policy landscape, including the impacts of Building Schools for the Future, Extended Schools, 14-19 Curriculum, and Every Child Matters have all been significant for academies, and have resulted in closer links being forged between academies and their local community of schools. There are challenges for academies in negotiating this evolving policy landscape.”<sup>33</sup>

Sponsors have also expressed concerns over the attitude towards academies at the DCSF. Some, who had been involved from the start, reported that an initial energy, freedom and zeal in the DCSF academies division seemed to have been eroded as the academy model became more mainstream, and as pressure has mounted to raise the numbers being set up. One told us: “We are starting to feel like the DCSF is just one big LEA.” There are also concerns that problems over budgetary control within one or two projects have led to increasingly stringent procurement processes culminating in the delivery of academies becoming part of the national Building Schools for the Future (BSF) scheme in March 2006. (We describe the impact this has had on the process of building an academy below.) Sponsors feel that Partnerships for Schools, the quango responsible for Building Schools for the Future, is another centrally controlled barrier in their path.

The purpose of the academies programme is to increase the freedom of schools and diversity of provision. As such, academies should have freedom over their curriculum and they should be sponsored by organisations other than the local authority

**Recommendations:**

- 1 Restore curriculum freedoms for new and existing academies.
- 2 End local authority co-sponsorship of academies.

31. Section 482(3)(a) and (b)

32. Hansard, Col 1378W, 26 July 2007

33. PricewaterhouseCoopers, op cit

## What Does the Academies Legislation Allow For?

The legislation that allows for the creation of academies goes much further than the current government programme. As we have seen, the programme has focused on rebuilding failing schools in co-operating local authorities, with a sponsor “paying” £2 million for the privilege of providing new leadership. This is quite a restricted model, which is why the Government is still some years away from its target of 400 academies out of around 3,350 secondary schools. But the legislation does not require that academies be built from scratch or that they can only replace failing schools. It also does not require that local authorities support the decision or that sponsors have to put up £2 million. We believe that such a narrow interpretation of the academies model is an unnecessary block on the original purposes of the programme.

Section 482 of the Education Act 2002 simply provides that:

*The Secretary of State may enter into an agreement with any person:*

- a) *to establish and maintain, and to carry on or provide for the carrying on of, an independent school in England, and*
- b) *to make payments to that person.*<sup>34</sup>

There are very few limits on the characteristics of an academy. They must have the following characteristics:

- a) *a specialism – in that it places emphasis on a particular subject area, or particular subject areas as specified in the agreement;*
- b) *provides education for pupils of different abilities who are wholly and mainly drawn from the area in which the school is situated.*<sup>35</sup>

It does not have to replace a failing school or be built in a disadvantaged area. Yet the

Government insists that this be the focus of the programme. A section on the DCSF website about the criteria for academies states: “Most of them replace existing weak or underperforming schools. As a broad rule of thumb, the Government is prepared to consider any secondary school where in 2006 fewer than 30 per cent of pupils gained five or more GCSEs at grades A\* - C (including English and Maths) as a potential academy project. In addition, local authorities should always consider an academy as an option for dealing with a school in special measures, or subject to an improvement notice, whatever its results.”<sup>36</sup>

The usual reason given for this is that to focus on any schools other than the worst would dilute the programme. However, this is only true because of the huge capital costs involved in building a new academy. Again, although many of the failing schools replaced by academies would have needed to be rebuilt anyway, there is no reason why academies should always be new builds. The Government has already tacitly accepted this by allowing independent schools into the state sector through the academies scheme. In September 2007 William Hulme Grammar School in Manchester and the Belvedere School in Liverpool became the first independent schools to enter the state sector in this way. Of course, neither of these schools was previously under-achieving academically; and neither of them has been rebuilt. As there are no significant capital costs attached, the DCSF does not see the addition of these schools to the academies programme as a dilution of focus. In a speech to the Headmasters’ and Headmistresses’ Conference in October 2007, Schools Minister Lord Adonis, announced that three more successful independent schools were on the road to academy status: Colston Girls’ School and Bristol Cathedral School (both in Bristol) and

34. In this Section “agreement” is also known as a funding agreement and “person” is also known as a sponsor

35. Section 482(2)(a) and(b)

36. [www.standards.dfes.gov.uk/academies/faq/?version=1#2778527](http://www.standards.dfes.gov.uk/academies/faq/?version=1#2778527)

Birkenhead High School. In doing so he spoke of “embracing innovation, and combining choice and diversity with excellence”.<sup>37</sup>

“ Another model that could be utilised in the future is the multi-school academy where a governing trust signs one contract to run several schools ”

It is difficult to disagree with this ambition, but it seems in stark contrast to the Government’s professed focus on failing schools. The teachers’ unions were quick to see the danger of such a widening of the academies programme, denouncing Lord Adonis’s speech (unlike their warm praise for Ed Balls). Steve Sinnott, the NUT General-Secretary, rejected “the implication that somehow private schools and the quality of teaching within them is better than that in state schools”.<sup>38</sup> Of course, the unions are well aware that any expansion of the programme threatens centralised pay bargaining because academies have the freedom to set their own pay and conditions for teachers.

We know from the PwC report that it is the independence of academies and the ethos of the sponsors, not just the new building, that makes them successful. We know that the Government is in principle happy for successful schools to become academies (albeit previously independent ones). So why not allow any school that signs up a reputable sponsor and has a clear plan of action to become an academy? If freedom works for the existing academies why should it not be available to all schools? Schools Minister Jim Knight was recently asked this very question and replied bluntly: “My department has no plans to extend these freedoms more widely.”<sup>39</sup> He gave no reasons.

In the same speech that announced the entry of three new independent schools

to the academies programme Lord Adonis also scrapped the £2 million fee for private schools that wish to sponsor academies. This followed Balls’s announcement earlier in the summer that universities were exempted from the sponsorship fee.

Other sponsors, however, are still required to pay up. Those we interviewed felt it was a severe constraint. One said: “If a sponsor is thinking of doing it more than once, it [£2 million] would be problematic.” The DCSF does allow a reduced contribution of £1.5 million but only after a sponsor has set up three academies. Again the original rationale for the fee was the large capital costs of building a new academy. There are two points here. If sponsoring an academy no longer meant automatically being involved in a new build then this would not apply. Secondly, the DCSF has recently announced that, in any case, sponsors’ contributions will go into endowment funds for the schools and the capital costs will be met entirely from public funds. There seems little reason why the fee should now be compulsory; it remains solely as a barrier to potential sponsors. In our survey of sponsors, a change to the £2 million requirement came joint second on a list of changes that would most encourage them to set up another academy. As another sponsor said: “It’s hard to find people to go through all the hassle. By the time you’ve finished, you want them to pay *you* £2 million!”

There is nothing in the law to prevent the supply of many different types of academy to respond to the varying needs around the country. For example, some primary schools may wish to become academies. Another model that could be utilised in the future is the multi-school academy where a governing trust signs one contract to run several schools. Although a number of sponsors have

37. [www.dfes.gov.uk/speeches/media/documents/hmcbournememoth.doc](http://www.dfes.gov.uk/speeches/media/documents/hmcbournememoth.doc)

38. [www.teachers.org.uk/story.php?id=4107](http://www.teachers.org.uk/story.php?id=4107). In 2007, 30 per cent of children at private schools achieved three As at A Level compared to 7.4 per cent in comprehensive schools, see “GCE/VCE A/AS and Equivalent Examination Results in England, 2006-07 (Provisional)”, DCSF

39. Hansard, Col 890W, 15 October 2007

gradually added schools to their portfolios there is no reason why the DCSF could not enter one funding agreement with a sponsor for a group of schools. Central services like human resources and finance could be provided from a share of the funding for each academy.

If more freedoms are good for some schools they will be good for all schools. There is no reason for every academy to be a new build or for retaining the compulsory £2 million for any sponsor.

**Recommendations:**

- 3 Allow any school with a suitable sponsor and a viable plan for using its new powers to apply for academy status.
- 4 Remove any obligation to pay a sponsorship fee. If organisations are prepared to provide a financial endowment for their academies this will obviously be welcomed.
- 5 Engage large sponsors in multi-school funding agreements.

### Building Schools for the Future

Perhaps the most significant change to the academies programme since its inception was the decision in mid-2006 to bring the procurement of all buildings within the government's Building Schools for the Future (BSF) scheme.<sup>40</sup> All new academies are now managed by Partnerships for Schools (PfS), the quango that delivers BSF. This was publicised as a move to greater cost-effectiveness by using procurement mechanisms that BSF will provide, and followed a number of cost overruns on the first series of academy builds. Although there certainly were lessons to be learnt from the project management of the first

academies, the sponsors that we interviewed were especially worried by this centralising shift.

One spoke of the "invidious nature" of the programme: "It dictates physical lay out and everything follows from that. The BSF programme is locking the door on any genuine diversity for decades to come. It is completely top-down. There is in effect no parental decision-making on how it is spent. The role of the consumer is virtually non-existent...the Government dictates in ever increasing detail; a surrogate for parental choice."

In announcing this change the DCSF stated: "...integration of academies with BSF will bring about more cost-effective procurements and will maximise the value for money that the programme can deliver...it will create a more integrated approach to estate planning – as academies will be included in local authorities' estate planning this will allow more integrated implementation of their strategic vision for secondary education provision across the local authority."<sup>41</sup> The last point highlights the move towards standardisation and centralisation of the academies programme. The independent management of the buildings aspect of academy development has effectively been removed.

Guidance to sponsors from the DCSF confirms their more limited role: "Sponsors will have a limited role during the academy construction, but will be kept informed of progress and will be consulted when required. However, sponsors will need to promote the construction work as an important part of the academy's vision to contribute to the overall needs of the local community."<sup>42</sup> As a result of this sponsors' risk is actually increased since they will have little say in the construction process but are being asked to sign-off and take forward the ownership of the land and buildings. Liabilities from building work can take years to emerge and years to be resolved.

40. [www.bsf.gov.uk](http://www.bsf.gov.uk)

41. "Response to the Third Annual Report from the PricewaterhouseCoopers Evaluation of the Academies Programme", DfES, July 2006

42. "Guidance to Academy Sponsors on PfS", DCSF

Under the new BSF framework, academy sponsors are not allowed to meet their project managers before selection, despite the crucial role that the project manager plays in the delivery of such a complex project. Two sponsors have described as “ludicrous” and “crazy” this new barrier in the delivery process. As in any professional appointment, meeting the person who will be so germane to the success of the project is a standard practice and one way of reducing risk. The sponsors we interviewed had particularly strong views on this aspect of academies’ delivery, agreeing that they should have the freedom to be, or employ, their own project managers. One sponsor told us that it was “extremely unhelpful to have a project manager. We could have done it better ourselves.” Another said: “We’ve tried to avoid project managers. It’s an awful system. We have people here who could do it. We had to sack some before and they were charging lots of money... Only one or two PMs had any competence and we had to train them.”

When asked in our questionnaire to name “the top three things you would change to make you most likely to open up another academy” improvements in project management, procurement and standards of consultancy came first. The irony is that the major academy sponsors were really getting to grips with the processes of developing a new site when the powers to do so

were taken away from them. One sponsor told us that the Specialist Schools and Academies Trust had published a pamphlet, *On Time, On Budget*, which mapped the ideal procurement process based on his experience in Walsall. Unfortunately, he said, “we can’t now follow the procedure we followed in Walsall, or use the same architect, because the regulations have changed!” Another sponsor expressed frustration that they were not able to transfer knowledge from one build to the next: “Sponsors are only allowed to use architects and so on who are on their [local authorities’] books. Previously we were able to transfer our project team from the first academy to the second. We can’t do that now.”

It makes sense for new sponsors to be helped in building their first academy; it makes little sense to prevent existing sponsors from using their own people and acquired knowledge.

**Recommendations:**

- 6 Devolved capital and project management to established groups should be actively encouraged.
- 7 Refurbishment budgets should be given to academy sponsors to use as they see fit once they have established themselves.

---

# 2

## Demand and Supply in English Education

You may think that there is a set procedure for deciding when a new school is necessary –perhaps a formula or a statutory planning process that takes into account parental demands, the existence or lack of projected surplus places and the performance of existing schools. It is, however, left entirely to the judgement of local authorities. Changes brought about by the Education and Inspections Act 2006 mean that LAs have to respond formally to unhappy parents who want a new school, and must have “regard” to increasing diversity and choice in their area; but this means little in practice. Moreover there is DCSF and Audit Commission guidance (the Government has persistently denied that this amounts to rules) on surplus places, which focuses entirely on the economic costs rather than the educational costs of a lack of good places. Simply put, there are no effective mechanisms to make local authorities respond to demand when it is not in their ideological or economic interest to do so.

In this chapter we examine the evidence for unmet demand and review the school planning process. At the end of the chapter we make a number of recommendations designed primarily to enforce the spirit of the 2006 Act and give parents a genuine voice.

### Is There Unmet Demand?

The current English system suffers from an imbalance of demand for good school places over supply, especially in those parts of the country where the population is growing. The sheer number of children who fail to

gain a place at their parent’s first choice school and the quantity of subsequent appeals are indicative of this. Recent polls reveal serious dissatisfaction among parents, more of whom are moving to the private sector or using private tutors.. Those parents who cannot afford these options are, of course, disproportionately affected by the lack of good school places.

There are an estimated 1.5 million children applying for a school place in any given year – split between those aged 4 aiming for primary school and those aged 10 aiming for secondary school places. Local authority statistics for admissions reveal that 31 (out of 150) authorities have more than 20 per cent of parents failing to get a place at their first choice of school: a fifth of all education authorities are disappointing at least a fifth of the pupils in their area (33 authorities did not provide information).<sup>43</sup>

Parents are entitled to appeal against the admission decisions made by their local authority when they are dissatisfied with the school place allocated to them. In 2006, there were 78,670 appeals, representing 5.2 per cent of admission decisions. The level of dissatisfaction is higher for secondary school admissions, where parents appealed 8.3 per cent of decisions. More than 20,000 of all the appeals were successful (36 per cent), which appears to be a relatively high success rate. It is not clear why so many appeals succeed, but it may mean that admissions processes are not being conducted completely correctly or fairly. In 1997, there were 76,971 appeals and the level remains around 80,000 every year: they have not been declining over the

43. “Myth Behind School Admissions Claims Exposed”, *The Daily Telegraph*, 10 March 2007

past ten years.<sup>44</sup> More important than the overall level of appeals, however, is their distribution across local authorities, indicating higher levels of dissatisfaction in some parts of the country. In eight authorities more than 20 per cent of secondary admissions lead to appeals; the figure is more than 10 per cent in a further 34 authorities. The table below shows the LAs with the highest number of secondary appeals and the number of children affected.

A slew of recent polls has found parents increasingly discontented with the current system. A YouGov poll for *Reader's Digest* earlier this year found that only 41 per cent of parents believe that schools catered well for all abilities; down from 61 per cent when the poll was undertaken 20 years ago. In 1987,

47 per cent felt they had an adequate say in the running of their children's school; today it's 30 per cent.<sup>45</sup> Teachers' TV commissioned a poll in October 2006 which revealed that 330,000 children were not at their first choice school and that 22 per cent of parents were not happy with the school allocated by their local authority and would prefer to use a private school.<sup>46</sup> The poll found that dissatisfaction is particularly acute in London, where more than three times as many parents want to send their children to private school than the national average.

A poll commissioned by the Children's Society in October 2007 found that 51 per cent of parents would be prepared to move house to get their child into a good school. One in seven (14 per cent) agreed that they

Authority	No of Admissions	No of Appeals	% Appealed
Slough	2,085	599	28.7
Birmingham	13,765	3,711	27.0
Bradford	6,555	1,659	25.3
Havering	3,456	851	24.6
Bury	2,164	531	24.5
Lewisham	2,102	438	20.8
Manchester	5,077	1,042	20.5
Enfield	4,003	820	20.5
Darlington	1,272	245	19.3
Leeds	9,580	1,837	19.2
Richmond upon Thames	1,580	295	18.7
Barnet	4,051	704	17.4
South Gloucestershire	3,470	591	17.0
Kingston Upon Hull, City of	2,942	496	16.9
Blackburn with Darwen	1,958	330	16.9
Dudley	3,982	671	16.9
Barking and Dagenham	2,457	403	16.4
Derby	3,313	491	14.8
Lambeth	1,951	263	13.5
Hounslow	3,574	477	13.3
Hammersmith and Fulham	1,253	166	13.2
Poole	2,099	264	12.6
Warwickshire	7,206	905	12.6
Westminster	1,804	225	12.5
Kent	19,889	2,478	12.5

Source DCSF

44. DCSF Admissions Appeals statistics: [www.dfes.gov.uk/rsgateway/DB/SFR/s000728/SFR18-2007.pdf](http://www.dfes.gov.uk/rsgateway/DB/SFR/s000728/SFR18-2007.pdf)

45. [www.readersdigest.co.uk/images/files/State%20School%20Survey%20Fu%2011%20Results.pdf](http://www.readersdigest.co.uk/images/files/State%20School%20Survey%20Fu%2011%20Results.pdf)

46. [www.teachers.tv/node/17587](http://www.teachers.tv/node/17587)

would go as far as giving false information, such as lying about their faith or where they lived, a figure that rose to 23 per cent in London.<sup>47</sup> The problem is even acknowledged by the DCSF: in guidance to LAs on the Education Act it notes that research on parental preferences in 2001 showed that almost three in ten parents (28 per cent) did not apply to their nearest state school.<sup>48</sup> Parents in London were over two-and-a-half times more likely not to apply for the nearest school than those in shire authorities.<sup>49</sup>

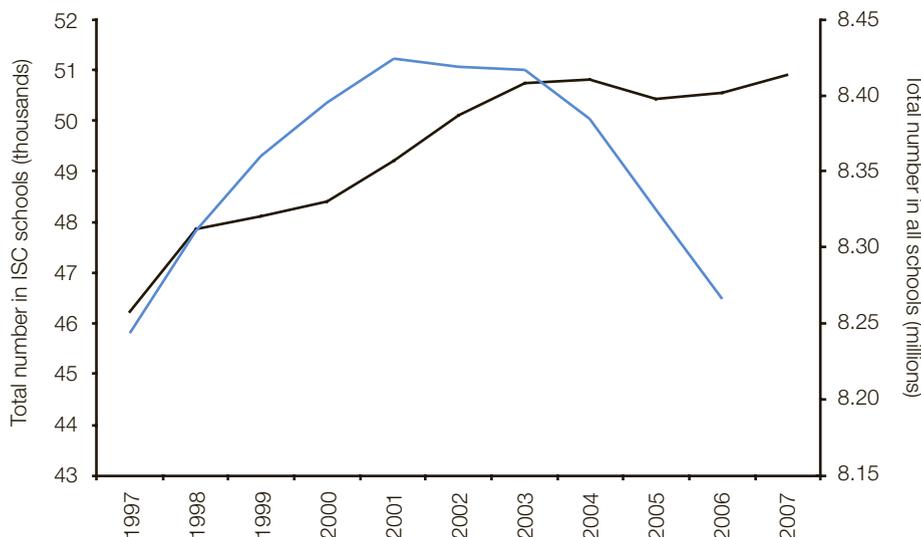
The Children's Society also argued that the shortage of good school places impacts most on the most disadvantaged members of society. They quote research from the Centre for Market and Public Organisation at the University of Bristol which found that 44 per cent of children who are eligible for free school meals have a good school nearby compared to 61 per cent of their better-off peers.<sup>50</sup> This problem was recently confirmed in Ofsted's first annual review. Among schools inspected in the past year, 20.2 per cent had 30 per cent or more pupils entitled to free school meals. Of those schools judged inadequate, 36.5 per

cent had 30 per cent or more pupils entitled to FSM. Ofsted concluded that "disproportionate numbers of deprived pupils attend inadequate schools".<sup>51</sup>

Although the most disadvantaged groups are left behind in inadequate schools those who can afford it are leaving for the private sector in ever greater numbers. The proportion of children attending private schools remains relatively low, at around 7 per cent, but the graph shows clearly that the trend has been rising whether the school-age population has been rising or falling. Even a 0.1 per cent increase in children attending private school, represents 8,000 families choosing to leave the state education service and pay for school fees from their post-tax disposable income.

There has been an increase of over 50,000 places at independent fee-paying schools during the past ten years.<sup>52</sup> In certain parts of the country the flight to the private sector is more pronounced: in ten local authorities more than 20 per cent of children attend private schools – seven of them are in London.<sup>53</sup> According to a 2004 MORI poll for the Independent Schools

Comparison of total number of pupils in all schools against total number of pupils in independent ISC schools (1997-2007)



47. [www.childrensociety.org.uk/all+about+us/media+centre/latest+news/the+good+childhood+inquiry/Good+Childhood+Learning+launch.htm](http://www.childrensociety.org.uk/all+about+us/media+centre/latest+news/the+good+childhood+inquiry/Good+Childhood+Learning+launch.htm)

48. *Parents' Experiences of the Process of Choosing a Secondary School*, DFES Research Report 278, 2001

49. *Ibid*

50. Burgess S, Briggs A, McConnell B and Slater H, *School Choice in England: Background Facts*, CMPO Working Paper No 06/159, University of Bristol, 2006

51. The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2006/7, p 65, The Stationery Office, October 2007

52. Independent Schools Council

53. *Schools and Pupils in England: January 2007 (Final)*, DCSF: [www.dfes.gov.uk/rsgateway/DB/SFR/s000744/index.shtml](http://www.dfes.gov.uk/rsgateway/DB/SFR/s000744/index.shtml)

Council, 50 per cent of parents would choose private schooling if they could afford to. In the YouGov poll for Reader's Digest this had risen to 59 per cent.

Those not wealthy enough to afford private education but desperate to improve the life chances of their children are increasingly using private tuition. A comprehensive survey of the use of such additional tutoring by the Institute of Education in 2005 showed that 27 per cent of school-age children had received some form of extra private help.<sup>54</sup> In some schools up to 65 per cent of children had received extra help, indicating an underlying dissatisfaction with school quality. Altogether, this adds up to a picture of parental dissatisfaction with the current supply of education services in certain parts of the country, particularly urban areas with growing populations. In such areas there is unquestionably a pressing demand for more and better schools.

#### School Planning

The Education and Inspections Act 2006 introduced changes to the way that local authorities are supposed to admit new providers to their education services. The Act abolished the old school organisation committees (SOCs), with the aim of increasing competition and transparency. As outlined in Policy Exchange's *More Good School Places* report, the SOC's were committees of existing state education providers, set up in 1998 to bring grant-maintained schools back under government control. School organisation committees displayed the classic symptoms of "producer capture" by allowing existing providers to protect their own position within the system against the threat of newcomers. Through the SOC's, existing state schools were able to prevent more popular rivals from expanding or new schools from entering the market, if it "harmed" them – ie provided competition for places. New and independent

schools were regarded with particular suspicion.<sup>55</sup>

Unfortunately, the function of the committees has now been returned to the LAs, which hardly improves the situation. If anything it makes it worse as the producer capture problem remains, but there is less transparency. Additionally authorities no longer have to produce a school organisation plan, a requirement introduced in the School Standards and Framework Act 1998. The purpose of this document was to provide a framework for decisions about pupil-place planning. Authorities had to publish detailed reasons for decisions about school planning. Even if one did not agree with these decisions at least the school organisation plans provided transparent data about the projections LAs were using.

Without any apparent reason the duty to produce this plan was repealed in 2005 as part of the Children's Act 2004. Along with 18 (!) other statutory plans it was replaced with the Children and Young People's Plan (CYPP), which each authority had to produce for the first time in 2006, and is updated annually. This plan, however, is supposed to cover the authority's entire strategy for "discharging their functions in relation to children and young people" – which covers quite a lot.<sup>56</sup> Unsurprisingly, there is little room for detail. Camden's CYPP, for example, contains one solitary paragraph on school planning. Others contain nothing at all. Some LAs, including Essex and South Gloucestershire, have continued to publish school organisation plans anyway, suggesting that they are, in fact, quite useful. Without them there is no way a member of the public can get any sense of the reasoning behind school planning.

Even if we are no longer able to see the process we must assume that LAs are engaging in some kind of planning rather than simply sporadic crisis management. So what do they have to consider? Most of the focus remains on surplus places, of which more shortly, but since May 2007 authorities have

54. Ireson J and Rushforth K, *Mapping and Evaluating Shadow Education*, ESRC Research Project, Institute of Education, 2005

55. O'Shaughnessy J and Leslie C, *More Good School Places*, Policy Exchange, October 2005

56. [www.opsi.gov.uk/SI/em2005/uksem\\_20052149\\_en.pdf](http://www.opsi.gov.uk/SI/em2005/uksem_20052149_en.pdf)

had a statutory duty “to promote diversity and increase parental choice in planning and securing the provision of school places”. There is also an “an explicit duty” on LAs for the first time to respond formally to parents seeking changes to the provision of schools in their area, including new schools.<sup>57</sup> What does this mean in practice? Well, where the local authority is satisfied that the communication from parents amounts to representation under the new duty, then they should investigate and respond in a proportionate way according to the circumstances of the case. So basically the authority now has to write a letter saying No. Even if every parent in the authority wrote in, the only response necessary would be a polite rejection.

Moreover, despite the EIA guidance that “All LAs will need to think creatively about capturing the views of the full range of their local residents” it is impossible to find anywhere to register dissatisfaction through local authority websites. Most make no mention of the new duties on their website despite explicit guidance that “we expect LAs to make information available to all parents informing them of their new rights”. Furthermore, the School Commissioner, introduced in the 2006 Act to monitor choice and diversity and parental satisfaction, does not have a website at all.

As for the new duty to promote diversity and choice it is difficult to see how this means anything in practice. If, *if*, an authority decides to build a new school, and it is not an academy, it now has to engage in open competition with other suppliers – in the next chapter we look at the problems with the competition process. But there has been only one true competition so far because it is so easy for LAs to rationalise a decision not to build a new school on the grounds of existing surplus places. Running schools with excess capacity is not economically efficient, but in order to give parents some choice it is necessary to have some surplus within the system at any time. Unfortunately, the schools that are successful tend to be oversubscribed and

full, leaving the surplus places in weaker schools. New, potentially better, schools will typically not be approved by local authorities when there are surplus places, regardless of their quality.

So what is a surplus place? In 2001-02 schools were measured and given a defined net capacity, a fixed number that relates to the number of pupils that can be fitted into the buildings based upon a formula for pupils per square metre. If a school is providing education to a smaller number of pupils than this, then it has surplus places.

Since local authorities control all decisions on school opening or closure, there is typically resistance to the opening of any new provision unless proven to be required over and above existing surplus places, even if these are in the worst school in the authority. In guidance following the Education and Inspections Act 2006, the DCSF acknowledged that when deciding on whether to build a new school LAs “should take into account not only the existence of spare capacity in neighbouring schools, but also the quality and popularity with parents of the schools in which spare capacity exists and evidence of parents’ aspirations for a new school. The existence of surplus capacity in neighbouring less popular or successful schools should not in itself prevent the addition of new places.”<sup>58</sup>

However, as with so much of the EIA guidance, practice contradicts the rhetoric. Every year the DCSF sends a letter to all LAs to gather data on their surplus places. The letter is revealing in the narrowness of its focus on the economic inefficiency of surplus capacity: “the surplus places return informs the Department of the extent of spare capacity in different parts of the country. It helps us monitor whether local education authorities are taking action to reduce it. For each school which has a surplus of 25 per cent or more (and at least 30 places surplus) the commentary should provide details of how the school is performing and what action is underway, or planned, for the future of the

57. [www.dfes.gov.uk/schoolorg/dataguidance/Documents/duty%20to%20respond%20to%20parental%20representations%20v2%202007-07-11.doc](http://www.dfes.gov.uk/schoolorg/dataguidance/Documents/duty%20to%20respond%20to%20parental%20representations%20v2%202007-07-11.doc), p1

58. “Establishing a New Maintained Mainstream School, A Guide for Local Authorities”, p 49, DCSF, May 2007

school. Where no action is proposed the LA should set out the justification for maintaining such schools.”<sup>59</sup>

Moreover, the DCSF employs the Audit Commission to provide guidance to authorities on surplus capacity and it has an even narrower focus on the economic impact of such capacity than the department. In its response to the White Paper that led to the 2006 Act the commission argued that “the expectations of users should be realistically managed and grounded in provision which is affordable and does not result in poor value for money. There needs to be a managed balance between the supply of and demand for school places. *The promotion of wider choice overstates both what is necessary or feasible for all.*”<sup>60</sup> It went on to argue for explicit regional advisory levels of acceptable places, regardless of the quality of those places, and that “the previous benchmarks of 10 per cent of places in aggregate and 25 per cent in individual schools should be reinforced.”

Given that the commission is the auditor for local authorities, it would be a brave LA that ignored its 10 per cent and 25 per cent benchmarks. Indeed, a quick glance through the minutes of any local authority discussion on surplus places shows that these benchmarks are usually accepted unquestioningly. In fact, until 2003-04 this benchmark was one of the Audit Commission’s “best value indicators” by which local authorities were publicly judged. So it was, and remains, a rule in all but name.

Judging surplus places on quantity rather than quality allows local authorities to ignore demand for more good school places as economically inefficient. As the chair of a South London education foundation told us: “In Merton, three schools are only half full and yet none are being closed. The quality is not good enough but they don’t want new ones in.” An education consultant told us: “There won’t be any new schools around here while there are still any places in failing schools available... You have to prove that there is a need for any school and this gets

blocked if there are any places in other schools around.”

The most recent statistics available, for 2006, show that there were 757,623 surplus places – up by 8 per cent since 2001, in English schools. Some 49 local authorities had more than 25 per cent surplus places in more than 15 per cent of their primary schools. They are under instructions to get these levels down and this is having a knock-on effect within the schools. Schools are being merged and closed down, and sites are then becoming available for sale or development (see chapter 4).

At the other end of the scale, 70 authorities have fewer school places than children, but there are still surplus places because so many parents choose schools in neighbouring LAs. This allows the authorities to justify decisions not to open new schools. So the fact that parents are so unhappy with the available quality of schooling that they travel outside their local authority becomes a self-perpetuating justification for blocking new suppliers from opening new schools. The table on the following page shows the 20 local authorities with the largest number of “exports” relative to “imports”. (It is worth noting that Hackney’s number of “exports” will come down now that the Learning Trust has taken over from the local authority.)

Some of these “exported” children are travelling astonishing distances daily to get a good school place. Detailed figures from the DCSF on where children resident in London boroughs go to school reveal some incredible journeys. Perhaps the greatest, in terms of distance, is that of four children resident in Lambeth but attending school in Hertfordshire. But there are thousands of less extreme examples of children travelling outside London to get to school; like the 130 children travelling daily from Islington to Hertfordshire or the 109 travelling from Greenwich to Kent.<sup>61</sup>

It is only once a council has a pressing deficit of school places, even within its less successful schools, that decisions start to

59.

[www.dfes.gov.uk/netcapacity/docs/LA%20Guidance%201etter%20-%202006.doc](http://www.dfes.gov.uk/netcapacity/docs/LA%20Guidance%201etter%20-%202006.doc)

60. [www.audit-commission.gov.uk/Products/NATIONAL-REPORT/FC8B4B31-C278-4987-8EFADA0F2-C20A6DB/ACResponseHigherStandardsBetterSchoolsforAll.pdf](http://www.audit-commission.gov.uk/Products/NATIONAL-REPORT/FC8B4B31-C278-4987-8EFADA0F2-C20A6DB/ACResponseHigherStandardsBetterSchoolsforAll.pdf), p 4

61. “School Destinations of Secondary School Pupils Resident in London Boroughs”, DCSF, 2007: [www.dfes.gov.uk/rsgateway/DB/SBU/b000739/contents.shtml](http://www.dfes.gov.uk/rsgateway/DB/SBU/b000739/contents.shtml)

favour new provision. In the cases of Lambeth, Hackney, Camden and other London boroughs with a shortage of places, this can be after many months or even years of delay. A *Guardian* article on the problem in 2004 reported that in Enfield “three years ago, the situation was so bad the authority had to provide emergency teaching in Bowes Road library for youngsters without a place. At its peak nearly 100 children were being taught in the library, mainly pupils who were newly arrived from other countries or from other parts of London, many of whom needed specialist one-to-one teaching.”<sup>62</sup>

Of course, where surplus places remain they are often found in schools that are not performing well. These schools are, by definition, the ones that fewer parents are choosing

as their first preference. A breakdown of the quality of surplus places by Ofsted category is not publicly available but many of our interviewees have told us that local authorities use the schools with spare places for those pupils that are excluded from other schools, harder to place, or for those who have arrived in the UK as asylum seekers or the children of economic migrants and who do not speak English. Some excess capacity is useful for an LA in case it needs to place a new arrival, and the level of excess capacity that is required can never be predicted accurately. Those schools that are oversubscribed and popular will be full and so unable to take any more pupils once the school year has started.

We argue that the clear failure of local authorities to respond to parental demand in

#### Local authorities with the largest exports of students as a percentage of school population 2007 (secondary schools)

Local authority	Net difference between imports and exports*	Net difference between imports and exports as a % of school population
Hackney	-3,600	-52.5
Lambeth	-3,950	-49.4
Reading	-2,313	-46.9
Knowsley	-1,922	-21.9
Bristol, City of	-3,239	-21.5
Lewisham	-2,398	-21.3
Harrow	-1,669	-18.4
Nottingham	-1,759	-12.4
Wolverhampton	-1,591	-11.4
Ealing	-1,604	-11.3
Leicester	-1,828	-10.9
Merton	-806	-10.2
Thurrock	-836	-9.5
Manchester	-2,124	-9.3
Bracknell Forest	-495	-9.1
Bradford	-2,637	-8.9
Greenwich	-1,091	-8.9
Haringey	-921	-8.4
Kingston Upon Hull, City of	-1,215	-8.1
Stoke-on-Trent	-1,083	-7.9

\* Negative figure indicates LA is a net exporter of pupils. Source: DCSF

62. “Battling to Meet Demand for School Places”, *The Guardian*, 26 January 2004

many parts of the country indicates a need for more stringent rules to trigger the creation of new schools. The focus should not be on the economic cost of surplus places, but the educational cost of failing to have enough good school places. The system is currently overstating its capacity by including all school places, regardless of how weak they may be. Only 51 per cent of secondary schools inspected by Ofsted since September 2006 have been judged good or outstanding.<sup>63</sup> If surplus places in these schools only were counted, the total would be considerably smaller.

For a start local authorities should, once again, have to publish a school organisation plan every five years. Unlike the previous plans, however, they should not focus exclusively on minimising surplus places across the system but on increasing the number of good school places. There should be an explicit focus on measures of unmet demand, such as the number of surplus places at good or outstanding schools. Others could include: the number of children unable to go to their first choice school; the number of appeals against failed applications; and the percentage of parents who registered a desire for new provision.

Central government could set limits across these categories – for example:

- There should be a minimum of 5 per cent surplus places in good or outstanding schools.
- The number of parents failing to get their first choice of schools should be fewer than 10 per cent.
- The number of admissions appeals should be fewer than 10 per cent.
- Fewer than 10 per cent of parents should have registered a desire for new provision.

While there could be exceptional reasons for failing on any one of these measures (for example, areas with grammar schools will naturally see higher levels of appeals) if any authority failed on three of these four measures it would be a clear sign that it was fail-

ing in its statutory duty to provide suitable choice and diversity for parents. Authorities failing on at least three measures should be forced to include provision for new school competitions in their plan. Only by forcing recalcitrant LAs to respond to clear demand can central government enforce the spirit of the 2006 Act.

The spirit of the Education and Inspections Act 2006 is being ignored by those who have responsibility for school planning. Local authorities must be held to account in a transparent way for their response to demand for good school places.

#### Recommendations:

- 1 Restore the responsibility for local authorities to produce school organisation plans every five years.
- 2 These plans should include details not only of surplus places projections, as previously, but also measures of parental demand: the number of surplus places at good or outstanding schools; the number of parents failing to get a place for their child at their first choice schools; the number of appeals and the number of parents registering a desire for new provision.
- 3 If any authority is failing to meet demand measured in this way they should be compelled to include provision for new school competitions or academies in their plan.
- 4 Each local authority should have a clearly navigable section on its website for parents to register a desire for new provision and all parents should be made aware of their right to register such a desire during the admissions process.

63. *Annual Report of Her Majesty's Chief Inspector 2006-7*, p 25, Ofsted, 2007

---

# 3

## A Fair Competition?

We have seen how the focus on keeping down the number of surplus places works against the aims of the Education and Inspections Act 2006 to increase diversity of supply in the school system. As the population of young people is falling in most parts of the country at the moment (see Chapter 4 for figures), local authorities are able to justify the status quo on economic grounds. In some areas, however, the numbers of young people are increasing because of internal migration and immigration. So occasionally the pressure to build a new school becomes so overwhelming that even the most recalcitrant local authority cannot ignore it. When this happens the LA has two options. It can either build an academy or start a competition between alternative suppliers for the right to build and run the new school. Some will choose the former simply to avoid the latter. If the authority decides to go for a competition it can offer its own entry. If it does then the competition will not be judged by the authority but by the Office of the Schools Adjudicator.

As this is a fairly new process, and authorities have been less than enthusiastic about embracing it, we have only one real competition to critique. Nevertheless, it is already clear that the process is flawed in a number of ways. First, authorities can avoid competitions by opting for an academy and then “co-sponsoring” it. Secondly, it is so costly for a new supplier to enter a competition

that there is little enthusiasm to do so. Thirdly, the school’s adjudicator does not appear to have been impartial in their sole judgement between a local authority and other suppliers. In this chapter we will look at each of these problems in turn, while offering policy recommendations to solve them.

### Building a New Maintained School

With effect from 25 May 2007 a new statutory framework was applied to the establishment of any new maintained school in England. Where the local authority wishes to see a new school established it must either:

- invite proposals for the school as provided for in Section 7 of EIA 2006 and the School Organisation (Establishment and Discontinuance) (England) Regulations 2007 (SI: 2007 No 1288). The process is generally referred to as a “competition”. This is expected to be the route by which most new schools will be established; or
- apply to the Secretary of State for consent to publish proposals for a new school, without running a competition, as provided for in Section 10 of EIA 2006.<sup>64</sup>

The only way an authority can avoid running a competition is where it is working with sponsors to establish a new academy.

64. [www.dfes.gov.uk/schoolorg/data/guidance\\_Documents/NewSchoolGuide\\_percent202007-09-05.doc](http://www.dfes.gov.uk/schoolorg/data/guidance_Documents/NewSchoolGuide_percent202007-09-05.doc), p 2

This can provide a perverse incentive for supporting the academy programme. As we saw in Chapter one, there is an increasing trend for local authorities to co-sponsor academies, which defeats the purpose of the programme: to increase diversity of supply in the school system. Where an LA actively wishes to avoid increasing diversity of supply through competition it can use the co-sponsorship of an academy to retain control over a new school. In these circumstances the academy programme can work against increasing diversity.

The London Borough of Camden recently had to organise new school provision to address its growing deficit of school places. The council decided against holding a competition, however, as it was nervous about the way such a process might go and was reluctant to lose control of school provision. An internal briefing paper drawn up by officials at Camden council to explain why councillors should support co-sponsoring an academy with University College London (UCL) made plain the desire to avoid competition:

*There is a significant risk that because of the emphasis in the...guidance on diversity, a community school bid would not win the competition and one of the sponsors would then be asked to set up an alternative school to a community school...The outcome of the competition could be a sponsor that the council does not approve of or that would not want to work as part of the family of schools in the way that University College London has indicated it does.<sup>65</sup>*

So the council decided to approve the academy project with UCL. This has led to local outcry – partly because of a NUT-inspired campaign against the principle of academies – but also because the

lack of a competition seems to work against parental choice. One letter in a local newspaper argued: “How can the council think it can provide the best new school if it only looks at one of the options?”<sup>66</sup> It is not in the interests of the academy programme to be used as a defence against open competition. Changes recommended in the first chapter that would prevent local authorities from co-sponsoring academies would help to close this loophole. Even so it seems odd that academies are exempt from competition; it devalues them by making it seem as if they are something imposed upon communities. Of course, in a situation where an academy were replacing an existing failing school or where academy powers were being given to an existing school, there would be no need for a competition.

#### Preparing for Competition

If a competition does take place the proposers (potential suppliers other than the local authority) have four months to prepare a bid. Government guidance insists that the sorts of proposers it wants to come forward include:

- parents and community groups
- universities and FE colleges
- education charities and business foundations
- voluntary and religious groups, including church and faith communities
- those offering distinctive educational philosophies
- existing schools or consortia of schools.<sup>67</sup>

It is extremely difficult to see, though, how some of these groups, especially those without previous experience of the education sector, could hope to fulfil the

65. Extract from London Borough of Camden internal memo, quoted in “UCL Lead in School Race”, *Camden New Journal*, 12 July 2007

66. “Five Good Reasons to be Suspicious of UCL bid for Swiss Cottage School”, *Hampstead & Highgate Express*, 20 July 2007

67. [www.dfes.gov.uk/schoolorg/data/guidance\\_Documents/Newper cent20school per cent20competitions per cent20guide per cent20final per cent202007-10-30.doc](http://www.dfes.gov.uk/schoolorg/data/guidance_Documents/Newper cent20school per cent20competitions per cent20guide per cent20final per cent202007-10-30.doc), p 2

demands of the bidding process. For a start the guidance is 51 pages long. The appendix listing information that must be included in proposals runs to 35 different categories. These include detailed information on subjects as diverse as extended services; how the proposals will contribute to enabling children to be healthy; and the proposed arrangements for travel of pupils to the school. Proposers are also expected to outline the staffing arrangements and provide detailed financial plans.<sup>68</sup> One interviewee who participated in the first competition observed that the information new entrants are required to provide should really be drawn up once the project is in progress rather than beforehand.

In order to negotiate this complex process the DCSF graciously offers proposers “up to three days free consultancy support from an educational specialist with knowledge of preparing proposals and the relevant legislation”.<sup>69</sup> This is unlikely to be of much value to a parent or community group. In fact the bidding process violates three out of the five rules for effective competition in local government markets as explained by PricewaterhouseCoopers in a 2006 paper for the Department of Communities and Local Government. These are, first, that the competition should involve “effective commissioning...elaborate processes and high bid costs are unlikely to positively affect outcomes”. Secondly, there should be low entry and exit barriers. And thirdly, there should be “competitive neutrality...There needs to be a level playing field for all types of provider, including across the private, in-house and third sectors.”<sup>70</sup> In this process the local authority has an in-built advantage because of its knowledge of education bureaucracy and the local area and because it has the funds to finance a bid.

Any government genuinely committed to the principle of competition should be

prepared to invest a relatively small amount to allow any group to put together a serious proposal. Every proposer should be eligible to draw funds to support the bidding process. This should be enough to allow one member of the group (or a bought-in consultant) to work full time researching and preparing the bid, and then shepherding it through public consultation and the competition. The whole process is supposed to take seven to eight months so bidders should be able to apply for up to £50,000 funding. There would need to be vetting to prevent fraudulent bids and also a limit on the number of times one organisation could access funding (it will learn the ropes over time). The cost would, however, be minimal. If ten authorities held a competition in any given year (remember only one has been held so far) and five suppliers entered each one, the total annual cost would be £2.5 million – around a hundredth of the amount that the DCSF spends on central administration every year. It would be a small price to pay for a genuine commitment to diversity of supply.

In addition to offering financial support to bidders, the process could be redesigned to involve the public at an earlier stage. Currently decisions on crucial issues of provision (like extended schooling) have to be made before any public consultation has been held. The first (and only) public meeting required by the guidance takes place after the four-month process of constructing the bids. Surely it makes sense for there to be a meeting early on so that proposers can gauge opinion of their general plans before embarking on extensive research. This would allow them to modify their plans if necessary – or even drop out of a time-consuming process if their plans were unwelcome. A second meeting could be held once the full proposals had been completed.

68. *Ibid* pp 30-34

69. *Ibid* p 28

70. PricewaterhouseCoopers, “Developing the Local Government Services Market to Support a Long-term Strategy for Local Government”, DCLG, May 2006

### The Competition

The new process for entering the maintained sector is in its infancy. Only one competition has actually gone to judgement. However, this competition, in Haringey, North London, resulted in the local authority being awarded the new school and it will be another community school. Of course, this does not represent an increase in diversity for the Borough of Haringey and the decision has been greeted with dismay by those who tendered for the new school. It raises serious questions about fairness and the role of the school adjudicator in the competition.

So who are the school adjudicators? They are ten individuals appointed by the DCSF to deal with admissions disputes and school reorganisations. They make decisions on a huge range of planning issues: school closures; enlarging or amalgamating schools and competitions. Yet despite their powers they are entirely unaccountable beyond having “regard” to guidance provided by the DCSF. In the case of competitions for new schools this guidance is so broad as to allow almost any interpretation. The statutory guidance for the adjudicator explains that “the Government wishes to see a dynamic system in which...new providers have the opportunity to share their energy and talents by establishing new schools”. There is a specific duty to “consider the extent to which proposals...will add to the diversity of provision in the area” as “the Government wishes to enable local communities to benefit from the energy and talents of new providers and to increase parental choice”.<sup>71</sup>

Yet in their judgement on Haringey the three adjudicators involved more or less ignored this, arguing instead that a “small majority” of individual responses from parents were in favour of a community school, despite acknowledging that the

three proposals from alternative suppliers would increase the diversity of places and the community school proposal would not. However, this argument was somewhat undermined by the adjudicators themselves when they admonished Haringey for its failure to produce an impartial consultation document for parents and local groups. The consultation document insisted that “the new school should be a non-denominational, inclusive school, which suggests a community school”. As the adjudicators noted “this seems to imply, falsely, that no other type of school could be non-denominational and inclusive”.<sup>72</sup>

The unfairness of having one of the participants run the consultation process was confirmed in interviews with two of the external providers who entered the competition. They described the suspiciously “stony silence” that greeted their presentations at the public consultation meeting, followed by “rapturous applause” for the Haringey submission. We also understand that the meeting was adjourned and reconvened to allow the Haringey team to revise their presentation, and their second attempt included many good ideas gleaned from a review of their competitors’ proposals. One of the participants told us: “The competition process was very expensive for us, and I could tell that the outcome was going to the local authority anyway. We will have to think carefully before putting a lot of resources into future competitions.”

Any consultation process run by, and based on a document written by, one of the competitors is unlikely to be fair and impartial, yet the adjudicators used this consultation as a reason to ignore the guidance to increase diversity. This is clearly unacceptable. In future, consultations must be run by DCSF staff or by independent consultants appointed by

71. [www.dfes.gov.uk/schoolorg/data/guidance\\_Documents/NewSchoolGuide\\_per\\_cent202007-11-06.doc](http://www.dfes.gov.uk/schoolorg/data/guidance_Documents/NewSchoolGuide_per_cent202007-11-06.doc), p 42

72. [www.schoolsadjudicator.gov.uk/upload/STP000229\\_per\\_cent20Haringey\\_per\\_cent20competition.doc](http://www.schoolsadjudicator.gov.uk/upload/STP000229_per_cent20Haringey_per_cent20competition.doc), paras 42-45

the DCSF; if one of the competitors writes the rules it cannot be a fair competition. Moreover, the guidance needs to be stronger so that the adjudicators cannot ignore the spirit of the EIA 2006. There should be a presumption that a supplier other than the local authority will win the competition. If the adjudicator does wish to award the school to the LA it should have to explain why it is not in the interests of the local community to increase diversity.

Finally we need to consider if the school adjudicators are genuinely impartial. All ten of the current adjudicators are what could be termed members of the educational establishment. Seven have held senior positions in local authorities. Of the other three, two have held senior positions at Ofsted and the third was assistant director of planning at the Funding Agency for Schools. It is likely, therefore, than any given panel made up of three of these adjudicators will be broadly sympathetic to the aims of local authorities, even if they involve sabotaging the EIA. Given the immense powers of the Adjudicator's Office surely there should be a range of backgrounds and skills represented? There are no former headteachers; business leaders or "lay" parents on the list of adjudicators. Having a diverse group making decisions about school supply would undoubtedly increase the diversity of supply. As PriceWaterhouseCoopers noted in its paper on effective competition in local government "within a market all the conditions [necessary for effective competition] may be present but cultural and political factors could impact and influence what happens in practice".<sup>73</sup>

According to the latest annual report from the Office of the Schools Adjudicator, although it has judged only one competition to date "there are likely to be more shortly", in which case it is essential that the rules are fair.

#### Recommendations:

- 1 Academies should be included in the competition process so that communities are offered a genuine choice (except where academies are replacing failing schools or academy powers are being given to existing schools).
- 2 A fund should be set up to allow proposers to employ someone full-time to research and prepare their bid and to shepherd their bid through the competition process. We estimate a cost of around £2.5 million a year.
- 3 Proposers should have the opportunity to put the general outline of its bid to a public meeting before having to prepare the full bid.
- 4 The public consultation should not be run by the local authority if the authority is participating in the competition.
- 5 Guidance for the Office of the Schools Adjudicator should be rewritten so that there is a presumption that an alternative supplier will be chosen.
- 6 School adjudicators should be appointed from a wide range of backgrounds so that political and cultural sympathies do not prevail over the spirit of the Education and Inspections Act 2006.

73. Pricewaterhouse Coopers, "Developing the Local Government Services Market to Support a Long-term Strategy for Local Government", p 7, DCLG, May 2006.

---

# 4

## Planning for the Future

In the last chapter we saw how Camden Council is attempting to avoid holding a competition to build a new school by authorising a new academy which they will “co-sponsor”. We discussed the unpopularity of this move among local residents, because it denies them a real choice. But there is another reason for this unpopularity. The school is being built in entirely the wrong part of Camden. There are already three secondary schools near the site – one of them, Quintin Kynaston, is just 200 yards away, and another, Haverstock, is a mile away. The increase in the number of children that led to the decision to build a new school has happened in the South of the borough – meaning children attending the new school will have to travel across Camden. Moreover, the school is being built on a busy junction and on too small a site. According to current designs the playground will be on the roof.

“ One primary school provider told us: “The single biggest obstacle to us in setting up new schools is getting a site. Getting a site for a new school is almost impossible.” ”

Why is this happening? Because schools can only be built on land designated for non-residential purposes. This is known, in planning parlance as D1 land and is also used for hospitals, museums and libraries among other things. Local authorities are increasingly selling off D1 land for residen-

tial development – without taking into account the impact of future population growth on public services. As one primary school provider told us: “The single biggest obstacle to us in setting up new schools is getting a site. Getting a site for a new school is almost impossible.” This problem will only get worse – and is a huge block on supply-side reform. Without land LAs cannot build new schools to satisfy demand even if they did wish to honour the spirit of the 2006 Act.

### Mortgaging the Future: The Sale of D1 Land

State control of industry and public services has been steadily diminishing since its peak in the 1970s. But one area that has seeming immunity from this trend is housing and planning. Decisions on what to build and where, be it a block of flats or new seat of learning, are still the almost exclusive preserve of the State. In recent times, the inability of the Office of the Deputy Prime Minister to match soaring housing demand with a woefully inelastic supply, has contributed hugely to unprecedented price rises.

Existing planning regulations dictate that schools must be built on D1 land. That such land be preserved for public usage is essential, particularly given that the insatiable demand for housing that exists in much of the UK will ensure that, if not protected, private developers will snap it up. This situation is unavoidable because of vast discrepancies in purchasing power between education providers and

residential property developers. There will be little capacity for any growth in the future if no sites are available for expansion of public service infrastructure.

As we saw in Chapter two the mechanism for planning the provision of school places is almost completely opaque. School organisation plans, which used to set out the pupil projections underlying school planning decisions, have now been subsumed into the children and young people's plan – which covers a huge range of issues. Each authority is under a statutory requirement to produce one, but precious little of it is devoted to the strategic planning of school places. We also saw in Chapter two that such planning as there is tends to be focused on reducing surplus places for purely economic reasons. Little thought seems to be given to increasing the number of good school places. This has led to a reduction in the overall number of schools: there are 1,000 fewer primary schools in England than in 1998 and 225 fewer secondary schools.<sup>74</sup> The emphasis on reducing surplus places has led many authorities to conclude that they are correct to be closing schools or amalgamating them into very large schools.

Amalgamation and closure have naturally led to an increase in available D1 land. However, current trends do not suggest D1 land is being protected as one would expect of so vital an asset, rather that local authorities are acquiescing to its sale and subsequent change of use for private development. If a LA decides that a school is to close there is nothing to stop the land being sold. Land for housing or commerce will always command higher prices and so an authority will gain financially by changing the use. Undoubtedly, if a choice has to be made between selling land for a high price today and keeping it for a possible future public use, the council's obligations to obtain "best value" on disposal are frequently cited as the reason for opting to sell.

However, the "best value" obligation does not prevent the authority from retain-

ing the land for future community use if it wishes to. The Local Government Act 1972: General Disposal Consent 2003 removes the requirement for authorities to seek specific consent from the Deputy Prime Minister and the Secretary of State for any disposal of land where the difference between the unrestricted value of the land and the consideration accepted is £2 million or less. It therefore offers authorities some freedom to exercise discretion in the disposal of their land, reserving it for community or education use even if the residential price could have been higher. In other words, local authorities could allocate their land to schools or other community services, rather than to developers. This has not, though, prevented the emergence of a worrying decrease in the amount of D1 land available for public use.

Statistics from the Department for Communities and Local Government indicate a consistent movement of public land to residential status. Between 1995 and 2004, on average, 253 hectares of land were changed from "community services" to "residential": a total of 2,530ha (6,251 acres) over ten years.<sup>75</sup> Only 17ha a year have been changed in the other direction. This reduction in available land is already being felt in the education system. We have seen the problems it has caused in Camden. In another example, a new academy in Hackney was allocated a primary school site, even though a secondary school is usually four to five times larger. Compulsory purchase of extra space was necessary before the academy site could accommodate a secondary school of the necessary size and, as a result, two of the levels are below ground.

Statistics from the Greater London Authority reveal that 6,500 residential units have received planning permission on D1 land.<sup>76</sup> The following table shows the ten London boroughs where most D1 land is being switched over to housing use. We

74. [www.dcsf.gov.uk/rsgateway/DB/SFR/s000744/UPDATEDSFR30\\_2007.pdf](http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000744/UPDATEDSFR30_2007.pdf), Table 1

75. [www.communities.gov.uk/documents/planningandbuilding/xls/528961](http://www.communities.gov.uk/documents/planningandbuilding/xls/528961)

76. Source: Greater London Authority

have added a third column that shows the deficit in secondary school places in certain boroughs – their plans to build more homes compound the existing problem of a shortage of good school places. Those boroughs which are schooling children from other boroughs may also run into difficulties if new housing boosts school demand in their area. We conclude that the provision and planning of housing needs to incorporate the demand for school places much more closely. It does seem remarkable that, according to these GLA statistics, Lambeth is proposing over 500 new housing units on D1 land when half the schoolchildren resident in Lambeth are educated in other boroughs. Lambeth’s shortage of school places has been a local issue for many years, but seems even further from being solved.

#### A Rising Population

So the closing of schools to reduce surplus places has led to the sale of school land, primarily for housing. Of course, selling the land implies an assumption that demographic trends are permanent. We believe that this is a spectacular misreading of future trends, with serious implications for school choice in future years. We know from DCSF information on school rolls that our national school-age population has been falling in the recent past and will

continue to do so in the short term. Since 1998 the number of children in primary school has fallen by 322,000. Secondary school numbers peaked in 2004, since when they have fallen by 56,460.<sup>77</sup> These falls are due to a cyclical drop in the birth rate in the late Nineties that will continue to impact on school rolls. Current projections suggest a further drop of 150,000 primary school children and 530,000 secondary school children over the next ten years.<sup>78</sup>

This will lead to many more surplus places; many more school closures and further sales of D1 land. In the short term it will be harder to increase good school places through competitions. In the long term it could be catastrophic because the birth rate is now on the rise again. After reaching a low of 594,634 live births in 2001, it rose to 669,601 in 2006 – a level last seen in 1993.<sup>79</sup> Projections suggest that rises will increase in future years.

In addition, the Office of National Statistics has consistently underestimated the number of migrants to the UK – earlier this year it revised projections upwards by 45,000 annually to 2031.<sup>80</sup> The Local Government Association has recently released a report on the difficulties this underestimation causes for local authorities, one of which is an absence of school places. Using the example of Hull the report explains: “Until recently there have

Borough Name	Proposed Total Residential Units (with change of use from D1)	Level of import/export of school children
Wandsworth	943	13.3% imported
Lambeth	525	49.4% exported
Camden	505	14.8% imported
Islington	490	1.6% exported
Greenwich	381	8.9% exported
Merton	355	10.2% exported
Havering	330	3.5% imported
Barnet	320	5.6% imported
Sutton	307	16.0% imported
Southwark	299	1.1% exported

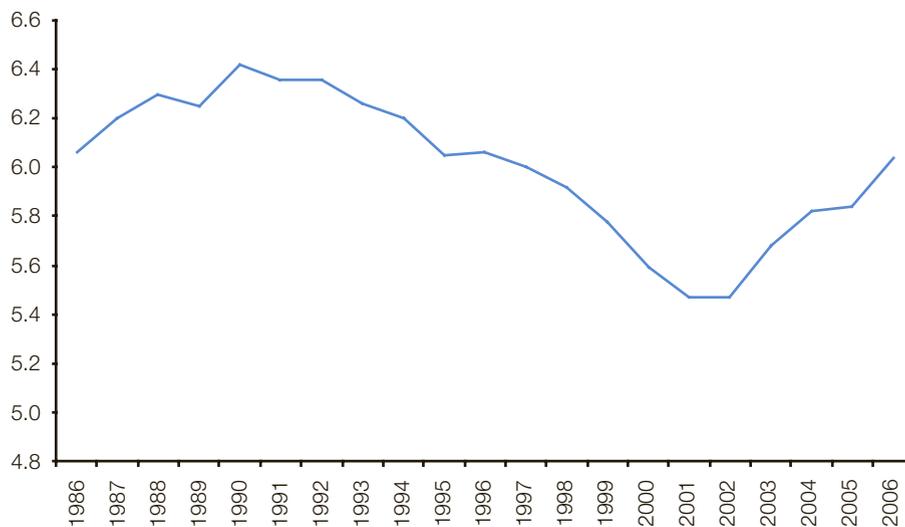
77. [www.dfes.gov.uk/rsgateway/DB/SFR/s000744/UPDATEDSFR30\\_2007.pdf](http://www.dfes.gov.uk/rsgateway/DB/SFR/s000744/UPDATEDSFR30_2007.pdf), Table 1

78. Milburn A, “Give a Credit, Save a Child”, *Sunday Times*, 28 January 2007

79. [www.statistics.gov.uk/downloads/theme\\_population/Table\\_1\\_Summary\\_Table.xls](http://www.statistics.gov.uk/downloads/theme_population/Table_1_Summary_Table.xls)

80. [www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/09/28/nimm128.xml](http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/09/28/nimm128.xml)

General fertility rate: all live births per 1,000 women aged 15-44 (1986-2006)



Source: Office of National Statistics

been surplus places in many schools in Hull and parts of the East Riding, but these are being reduced through reorganisation. There were already difficulties finding places for children in certain year groups, and this could make it difficult to place children, especially if they arrive during the school year.<sup>81</sup> Other authorities, such as Leicester and Slough, report similar problems.

Additionally there seems to be a lack of co-ordination across the country between housing plans and school closures based on reductions in current surplus places. Infrastructure to accompany housing is supposed to be governed by Section 106 of the Town and Country Planning Act 1990.<sup>82</sup> Section 106 obligations are effectively negotiated agreements between developers and local planning authorities, which determine what the effects of development will be and, consequently, what additional provision is required. The end result of this process ought to be something approaching sustainable development. Unfortunately the efficacy of such agreements has been repeatedly called into question. Developers criticise them for their inconsistency and lack of transparen-

cy. Lord Nolan's Committee on Standards in Public Life found planning obligations "were the most intractable aspect of the planning system with which we have had to deal...[and that they] have a tremendous impact on public confidence".<sup>83</sup>

Indeed, with respect to education, there is no specific provision that guarantees that appropriate schools will accompany new residential developments. As we saw in Chapter two the situation has already reached crisis point in inner London, with vast numbers of children "exported" daily to outer London or even surrounding counties. However, problems are now developing nationwide. In June 2007, officials from Hertfordshire County Council were forced to arrange for temporary classrooms to be installed at three St Albans primary schools. Despite parents having warned it that there might not be enough school places, the council was apparently surprised by the level of applications for primary schools this year. In recent years new housing has been built in and around St Albans, but the educational demand that this would create has not been correctly predicted or provided for. There are still no plans for a permanent new school to be built.

81. [www.lga.gov.uk/Documents/Publication/estimatingthescaleofmigration.pdf](http://www.lga.gov.uk/Documents/Publication/estimatingthescaleofmigration.pdf), p 90

82. The Town and Country Planning (Use Classes) Order 1987 (statutory instrument no 764): [www.opsi.gov.uk/si/si1987/Uksi\\_19870764\\_en\\_2.htm](http://www.opsi.gov.uk/si/si1987/Uksi_19870764_en_2.htm)

83. *Standards of Conduct in Local Government*, Third Report of the Committee on Standards in Public Life, July 1997

In Colchester the local authority is in the process of amalgamating two local schools, reducing the number of school places by 500 while 2,500 new houses are being built on the site of the former Colchester garrison.<sup>84</sup> There are similar concerns across the country, wherever new housing developments are springing up, from Ilkley<sup>85</sup> to Hampshire.<sup>86</sup> With three million new houses promised by 2020 this problem is only going to get worse.

So local authorities are being encouraged to reduce the number of surplus places in schools by the Government and the Audit Commission in response to currently falling school rolls, when we know that pupil numbers will start rising again due to rising birth rates, when we know that the ONS has drastically underestimated the number of immigrants and when we know that pressure on housing is leading to more and more new developments. This is staggeringly myopic. If we continue to ignore these demographic trends many other parts of the country will end up in the crisis situation in which inner London authorities currently find themselves.

Our recommendations from Chapter two would see local authorities refocus their school planning away from the simple economics of reducing surplus places and towards increasing the number of good school places. However, the dynamic market that we envisage, in which LAs are forced to open new schools, thus exposing failing ones, will only work if there is available land. It is essential, therefore, that the sale of D1 land be halted so that excess capacity can be maintained.

Playing fields are protected by separate guidance and receive more detailed protection from disposal than school sites generally.<sup>87</sup> There have been fewer sales of playing field land in recent years and, under the current guidance, any proceeds have generally been reinvested in community sport. The Secretary of State has to be consulted before the sale of a playing field is

permitted. Similar protection could enable school sites to be preserved.

Authorities should also have access to information about non-educational public land that could be used for school places. English Partnerships runs a register of the national surplus of public sector land.<sup>88</sup> The purpose is to ensure that wider government objectives are factored into land disposal decisions, including housing needs and regional economic and housing strategies. This is a valiant effort at joining-up areas of the public sector that have previously known little about each other's assets. A wide cross-section of public sector organisations have supplied information to the register about their surplus land. Local authority land is not yet included on the register, but English Partnerships is pressing for this. First refusal for sites is offered to public sector: once the disposing agency has provided English Partnerships with details of the site for inclusion on the register, there is a 40-day window for public sector agencies and departments to identify new uses for this land. If the sites can be used beneficially elsewhere in the public sector they may be transferred at market value and then be brought back into community use. So far about 70 public sector agencies have supplied details of more than 750 sites, totalling more than 5,000ha of land. Almost 300 sites are in the South East.<sup>89</sup>

Although the focus of the register is the freeing up of land for housing, there is no reason why the principle should not be extended to education. The key is to maintain spare capacity that can be utilised should an unexpected need arise. This would be particularly useful when it came to setting up a new school. For instance, if demand from parents for a new school manifested itself in an area of failing schools, it could be built on this spare public land without the usual delays, to speed the transition of pupils. If needs be the sites of failing schools could then be added to the register for future use. At present though,

84. Hansard, Col 135, 22 October 2007

85. [www.ilkleygazette.co.uk/mostpopular.var.1780992.mostviewed.city\\_lead-ers\\_to\\_tackle\\_ilkley\\_school\\_places\\_concerns.php](http://www.ilkleygazette.co.uk/mostpopular.var.1780992.mostviewed.city_lead-ers_to_tackle_ilkley_school_places_concerns.php)

86. [archive.hampshirechronicle.co.uk/2005/1/26/12768.html](http://archive.hampshirechronicle.co.uk/2005/1/26/12768.html)

87. "Protection of School Playing Fields and Land for Academies", DfES Guidance 1017, 2004

88. [www.englishpartnerships.co.uk/rspsl.htm](http://www.englishpartnerships.co.uk/rspsl.htm)

89. [www.englishpartnerships.co.uk/rspsl.htm](http://www.englishpartnerships.co.uk/rspsl.htm)

disappointingly little credence is given to school provision by English Partnerships. In fact they report that they have not been liaising with any would-be school providers. Even in the case of regenerating former NHS hospital sites, already classified as viable D1 land, the focus remains on delivering on housing targets, and in particular affordable housing. With a waiting list for public housing of 1.6 million, and the recent assimilation of English Partnerships into the Department for Local Government and Communities, it seems that education will be consigned to the background in perpetuity. However, local authorities estimate that for every house built on an estate, 0.5 school places are required. A housing estate of 800-1,000 houses generates demand for at least one primary school. The focus must be holistic with respect to new developments. The flexibility imbued in English Partnerships must be extended further if good school places are to accompany these ubiquitous new developments.

#### Innovation and Flexibility

As well as protecting existing D1 land better, we should look to allow the opening of schools on a greater variety of sites and locations. Innovation must be encouraged as available space decreases.

A good example of the type of innovation necessary is provided by St Mary and St Pancras Primary School in Camden. This one-form entry, 220-pupil primary school was using a Victorian building with 1960s additions, where the leaking roof and other modernisation work would require investment of £2 million. The London Diocesan Board for Schools (Church of England) decided that a complete rebuild would be the better long-term solution, especially since Ofsted had placed the school into special measures: radical improvement was needed in both the buildings and the education services. The estimated cost of rebuilding an inner city primary school is £4-5 mil-

lion, and, as a voluntary-aided school, the governors would have found it difficult to raise their 10 per cent contribution. Their imaginative solution was to develop the site jointly with UNITE, the student housing group. The primary school takes up the ground and first floors and student accommodation the three floors above. The combination works well as the students can be monitored and are not generally at home in the day time. Key worker accommodation can be another successful mix with a school, but shift workers may be disturbed by the noise from the playground. Ensuring the safety of the children means that residents in such mixed schemes must be selected with great care.

“ The focus must be holistic with respect to new developments. The flexibility imbued in English Partnerships must be extended further if good school places are to accompany these ubiquitous new developments ”

St Mary and St Pancras Primary is a spacious, light and modern environment, which the teachers and pupils are enjoying; pupil behaviour has noticeably improved in the smart new surroundings. Excellent outdoor play space has been included, with a quiet garden area and a ball court that may be used by the community. There is also space for the local Sure Start administrative office, making the site a valuable resource for local families. Ofsted now rates the school “outstanding” and it is heavily oversubscribed, with three applicants per place. Significantly this turnaround occurred within three years, well under the five-year standard. Such joined-up thinking in the provision of homes and school places is not unheard of, but it is rare. The example of St Mary and St Pancras Primary School does show that many of the problems that we have detailed can be circumvented.

Another way to increase flexibility would be to allow school providers to develop on sites other than those strictly classified as D1. There would need to be a register of possible sites for school provision, and it should also be made much easier for providers to secure a change in land use. At present this requires planning permission. This may be desirable in most contexts, but with respect to schools a presumption in favour of granting permission should pertain except in exceptional circumstances. The experience of the New Model School Company illustrates problem of planning barriers very well. It already provides voluntary educational support services in two London boroughs and runs a primary school in West London. It charges very low fees and raises revenues through voluntary donations. It does not seek any public funding for its capital or revenue needs. According to the chief executive, Richard Williams, there is great demand from parents in parts of London for new, independent schools at reasonable prices, but the issues of sites and buildings, inspections and regulations are holding up the supply.

He cited in particular that finding land with the relevant D1 category of planning permission already in place to allow a school to operate was a major stumbling block. Local authorities, it seems, will resist a change of use application for a new school if it is outside their control. Apparently this is the case even when a provider would be taking financial pressure off the State by educating pupils at its own or donors' expense.

One of the greatest blocks on supply-side reform is the absence of land. The myopic sell-off of land following school closures could lead to a school places crisis once the UK is hit with the double impact of increasing birth rates and continued high levels of immigration.

**Recommendations:**

- 1 Land previously used for educational purposes should have the same status as school playing fields. Local authorities should have to apply to the Secretary of State in order to sell it – showing that it will not prevent a dynamic supply side.
- 2 D1 land owned by LAs should be added to the English Partnerships register of surplus public land. English Partnerships should liaise with authorities needing to increase school places and other educational suppliers looking for suitable sites.
- 3 The DCSF should publish guidance on mixed-use schemes and help housing organisations to liaise with educational providers.
- 4 Local authorities should be prevented from denying change-of-use planning permission to independent schools for ideological reasons, because such schools will help to ease demand on maintained sector places.

---

## Conclusion

The barriers to supply-side reform in England are not legislative but political. The recommendations in this report, taken together, would see the spirit of the law, which favours diversity of supply, honoured in practice.

Academies demonstrate that bringing new suppliers into education improves results and is popular with parents. Much of their success can be attributed to their independence. The Government has yet to explain why, if independence is good for academies, it should be denied to other schools. Every school should be able to apply for academy status if it has a sponsor and a viable business plan.

Local authorities are supposed to act as commissioners of education services rather than suppliers; but it is clear that this is not happening. Decisions on school planning remain politically motivated, and based on the economic cost of surplus places rather than parental demand. We recommend that planning for future places should be considerably more transparent; that measures of demand should be published and, if these indicate a need for more good school places, local authorities should plan for new schools.

On the rare occasions that they decide to build a new school, LAs are supposed to hold a competition, although they can avoid doing so by co-sponsoring an academy – a practice that should be disallowed. Unfortunately, in the only competition held to date, the schools adjudicator awarded the project to the local authority in defiance of government guidance. Moreover, the public consultation was run by the victor. Other bidders should be helped financially in preparing their proposals and a neutral organisation should be in charge of the public consultation.

Finally, the selling-off of D1 land could lead to a shortage in new school provision once the impact of the rising birth rate starts to kick in. Land previously used for education should be protected in the same way that school playing fields are currently protected. In addition innovative mixed-used schemes should be encouraged and change-of-use planning permission granted more readily to independent schools.

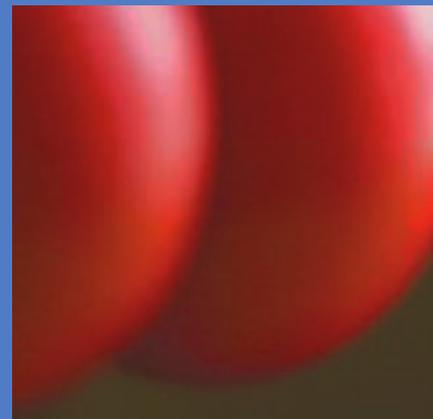
The legislation exists to give parents a real choice – all we need now is the political will to make it happen.



For nearly twenty years parents have been allowed to choose which schools their children attend. Or that is the theory. In practice, hundreds of thousands are denied their first choice and their children remain trapped in inadequate schools. School choice has failed to deliver because there is no market in education within which it can operate. Restrictions on the supply of places in good schools mean that school providers cannot respond to parental preferences as they would do in a normal consumer market.

The supply side of the education market is so constrained by administrative and even physical barriers that few new suppliers manage to surmount them. These barriers are the focus of our report – why they occur and, most importantly, how they can be removed. On academies we show sponsors' unease at the Brown Government's attitude and we ask why, if freedom is good for some schools it should not be available to all schools?

On surplus places and competitions for new schools we show how reforms passed under Tony Blair to provide potential new suppliers with a number of routes to enter the state system are being ignored by local authorities keen on retaining control of the school system. And on planning we show how demographic growth could cause crisis for authorities who have focused on removing surplus places with little regard for competition or flexibility of demand.



£10.00  
ISBN: 978-1-906097-11-0

Policy Exchange  
Clutha House  
10 Storey's Gate  
London SW1P 3AY

[www.policyexchange.org.uk](http://www.policyexchange.org.uk)