

## **Written Ministerial Statement by the Secretary of State for Education**

**11 February 2011**

### **School Capital**

1. Mr Justice Holman has today handed down his judgment on the judicial review brought against me by Luton Borough Council and Nottingham City Council; Waltham Forest London Borough Council; Newham London Borough Council; Kent County Council; and Sandwell Metropolitan Borough Council, following my decision in July 2010 to cancel Building Schools for the Future projects in their areas.
2. The Judge said that he was “absolutely clear that the decision is not open to legal challenge on a discrete ground of irrationality, however that argument is developed or put”; and he agreed that nothing which the Department for Education or Partnerships for Schools had done in respect of these local authorities went “so far as to create a substantive legitimate expectation that any given project would definitely proceed.”
3. These were the substantive points in this case and I am delighted that the Judge has ruled in my favour.
4. There were further, procedural, grounds on which the claimants made their case, in particular on a duty to consult; and on the duty to have due regard to equalities duties.
5. I acknowledge that, on these procedural grounds, the Judge has ruled in favour of the claimants. In essence, his view is that my consultation with 14 local authorities (in relation to 32 sample schools) and 119 individual academies (on their particular circumstances), did not go far enough and that I should have included the six claimant authorities in my consultation. And he judges that I should have had rigorous regard to equalities considerations in reaching my decision.
6. The Judge has not ordered a reinstatement of funding for any BSF project. Nor has he ordered me to pay compensation to any of the claimants. Instead, he has concluded that I “must now, after giving each of them a reasonable opportunity to make representations, reconsider [my] decision insofar as it affects the claimants and each of the projects in relation to which they have claimed, with an open mind, paying due regard to any representations they may make, and rigorously discharging [my] equalities duties.” I am happy to do so. He has made clear that provided I discharge my duties in this way, “the final decision on any given school or project still rests with [me]”; and that I “may save all, some, a few, or none”. He concluded by saying that “no one should gain false hope from this decision”.
7. The Judge has made clear that any other local authority, outside of the claimant group, would be far too late to apply for a separate judicial review on this matter.
8. My Department will shortly make contact with the claimant local authorities to set out a process through which they can make their representations to me.

Rt Hon Michael Gove MP