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REF:GD/MP  
9<sup>th</sup> October 2007

Dear Mr Kotey,

Thank you for your letters of 20<sup>th</sup> August and 14<sup>th</sup> September 2007. I note that you do not wish to comment on the allegations made in the NUT letter of 17<sup>th</sup> August as long as you can be assured the necessary arrangements are in place to meet the "Duty". My letter to you of 1<sup>st</sup> August outlined the steps we had taken to meet the Duty and stated that there would be appropriate consultation this autumn on the Council's strategy to increase secondary school places across the Borough. This consultation will enable us to continue to meet the Duty. The NUT will be able to respond to this consultation.

I will not comment in detail on the NUT allegations but will address their four conclusions on page 9 of their submission.

#### NUT allegations

1. *Brent Council has not carried out the required REIA for the current imbalance in secondary school provision between south and north Brent. It has also not carried out a REIA that addresses NUT concerns that more Black African-Caribbean residents in Stonebridge / Harlesden wards have to travel longer journeys to schools outside Brent than their Asian counterparts in north Brent.*

As my letter to you of 1<sup>st</sup> August stated, the Council has carried out an REIA and the forthcoming consultation will continue to assess the equality impact of the proposals to expand school places. My letter explained the reason why some students in the south of the Borough travel to schools outside the Borough, which is because in planning for school places the Council has to take account of places in neighbouring boroughs. Our recent ethnic monitoring of parental choice of school place has in fact shown high levels of demand from African Caribbean parents in the south of the Borough for places in schools in the north.

2. *The proposals for increasing school places will exacerbate the imbalance and are likely to lead to more Stonebridge / Harlesden residents going out-borough and / or travelling long distances to school.*

The Council is planning to increase the provision of school places in the south of the Borough by between 900 to 1200 places. Furthermore, a report which was considered by the Executive on Monday 8<sup>th</sup> October recommended the expansion of the two John Kelly Schools by 300 places as part of the planned increase. The Council is not in a position to expand places in the south of the



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Borough to achieve exactly equal geographical distribution of places because there are absolute site and financial constraints. However, the Council is seeking to maximise the number of places in the south, within these constraints, a point which the NUT consistently chooses to ignore.

3. *Brent Council minutes show that they were only looking for a Wembley site in 2004/5 because of demand in that area.*

There is a substantial and growing demand for school places in the Wembley area which is generated by at least 5000 new homes within half a mile or so of the proposed new Academy. This is why the Wembley site, which I have explained is central to the Borough and has good transport links, is an obvious site for a new school.

4. *There are suitable and available Brent owned sites in the Stonebridge / Harlesden area*

It is simply not the case that there are available Brent owned sites in the Stonebridge / Harlesden area which are of suitable size and affordable within the timescale needed to meet the demand for new school places. Of the new sites proposed by the NUT, the Gladstone Park site is Metropolitan Open Land and is not suitable or permissible in planning terms for school development and the Stonebridge (which is the site of two existing primary schools) is not big enough to accommodate a 1050 place secondary school as well. The Council has examined the possibility of adding a smaller secondary school to the site (in addition to the Wembley Academy) but the feasibility study was not workable or affordable and did not command the support of the governing bodies of the two existing schools on the site or of the local Housing Action Trust, the principal funder of development on the site.

This comment by the NUT goes to the heart of the disagreement between the Council and the NUT. The NUT appears to be alleging that by not building more places in the south of the Borough the Council is wilfully ignoring the needs of the people of the south of the Borough and in particular Black residents. The fact is that there are physical site and financial limits on expansion in the south and what the Council is proposing is to maximise the expansion within those constraints. The Council is not in a position to invent new sites or create unlimited resources.

The Council is a responsible public body and, in reaching its decisions, takes fully into account its duty to assess impact on equality within the context of what is practicably achievable and affordable. The real difference of opinion is about what is achievable and affordable not about the impact on different ethnic groups. This is primarily an educational and financial matter on which the Council is perfectly entitled to hold different views to those of the NUT.

#### Legal Issues

We consider that we have fully complied with our statutory general and specific duties. Your comments about the relationship between the general duty and specific duties have caused us some confusion. As well as referring to the general duty, our letter of 1<sup>st</sup> August 2007 also refers to the Code of Practice on the Duty to Promote Race Equality and sets out paragraph 3.16 of that Code which does seem to us to be very pertinent. I am afraid that stating that consultation, monitoring and publishing are required by law and are mandatory is not necessarily accurate. In some situations, statute or regulation may require this. In other situations it may clearly be the most appropriate course of action taking into account guidance or good principles of public law. In other cases there may be no such requirement. Everything depends on the context.

We are not aware of a specific race discrimination duty that sets out what a public authority must do when it is considering establishing a new school, or assisting in the establishment of a new Academy. If you could alert us to such a specific duty then that would be very helpful and we would consider it immediately. The Race Relations Act 1976 (Statutory Duties) Order 2001 does apply to local authorities to the extent that certain authorities including London borough councils must have a race equality scheme, see regulation 2. Regulation 3 applies to educational bodies. That Order does not specifically cover the establishment of new schools.

There are passages of some relevance in the recent guidance by the Department for Children, Schools and Families "Establishing a New Maintained Mainstream School" which are worthy of note even though of course the new Academy will not be a maintained school. See paragraph 51 of this guidance which says that "*the Decision Maker should consider whether there are any sex, race or disability discrimination issues that arise from the changes being proposed...*" Also see paragraphs 55 to 57 on Community Cohesion and Race Equality which require that promoters of new schools "*...include in their proposals information about how the school will tackle religious, social, racial and cultural division and meet the statutory duties to promote community cohesion and well - being...*"

Again we consider that we have complied with this guidance and are working in partnership with the sponsors of the new Academy to ensure that we fulfil our statutory duties during consultation and subsequent implementation of our proposals. In view of the above I trust you are reassured that Brent is taking positive steps to fulfil its duties under the Act and that you do not need to be involved further in this development.

Finally, I understand that you have written separately to the Leader of the Council, Cllr Paul Lorber, concerning some press comments attributed to our Lead Member for Children and Families, Cllr Wharton. The Leader's Office will be responding to you direct on that matter.

Yours sincerely,



**Gareth Daniel**  
**Chief Executive**