

DETERMINATION

Case reference: ADA2395

Objector: A member of the public

Admission Authority: The governing body of the Academy Trust of Canary Wharf College

Date of decision: 13 December 2012

Determination

In accordance with section 88H (4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing body of the Academy Trust of Canary Wharf College.

The objection

1. Under section 88H (2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Adjudicator by a member of the public (the objector), about the admission arrangements (the arrangements) for Canary Wharf College (the School), a primary Academy for pupils aged 4 to 11 years of age, for September 2013. The objection contends that the arrangements were not determined or forwarded to Tower Hamlets Council, the local authority (the LA) by the date required by the School Admissions Code (the Code); that they discriminate against disabled children and that information published in the public consultation is contradictory and misleading about which children are prioritised for admission to the School.

Jurisdiction

2. The terms of the Academy agreement between the proprietor, Canary Wharf College Limited, and the Secretary of State for Education require that the admissions policy and arrangements for the Academy School are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing body of the Academy trust, which is the admission authority for the Academy school, on that basis.

3. The arrangements were referred to the adjudicator under section 88H (2) of the Act on 20 October 2012 by an objector who wishes to remain anonymous. The objector has provided the Adjudicator with their name and address, as required under Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012.

4. There is a time limit for objections and Regulation 23 states that an adjudicator is not required to determine an objection referred under section 88H (2) unless it is received on or before 30th June in the determination year. Although I am not therefore required to consider this objection I have decided to exercise my discretion to consider a late objection, because in this case the objection could not have been made until the arrangements for the School had been determined. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and is within my jurisdiction.

Procedure

5. In considering this matter I have had regard to all relevant legislation and the Code.

6. The documents I have considered in reaching my decision include:

- the objection dated 20 October 2012 ;
- a copy of the School's determined arrangements for 2013;
- minutes from the meeting of the Governing Body on 27 September 2012 at which the arrangements were determined;
- Annex B of the Funding Agreement, 'Requirements for the admission of Pupils to Canary Wharf College';
- Annex C of the Funding Agreement, 'Arrangements for pupils with Special Educational Needs and disabilities at Canary Wharf College';
- a copy of the booklet, "Starting School in Tower Hamlets, a Guide for Parents 2013 ; and
- the School's response to the objection.

7. I visited the School on 26 November 2012 and met with the Chairman of Governors, the Headteacher and the Chair of Admissions to discuss and consider the School's response to the matters raised in the objection. I have taken account of information received and views expressed during that meeting and subsequent information from the School.

The Objection

8. The objection has three elements, the first of which states that the School's arrangements were not determined or forwarded to the LA by the date required by the Code. The objector cites paragraph 1.47 of the Code which says, '.....Admissions authorities **must** send a copy of their full determined arrangements to the local authority as soon as possible before 1 May.'

9. The second element alleges that arrangements discriminate against disabled children. Paragraph 1.9h of the Code explains that it is for admission authorities to formulate their admission arrangements but they must not discriminate against or disadvantage disabled children or those with special educational needs.

10. The final element contends that the School gives contradictory information about admission arrangements in the current public consultation documents displayed on the School's website, which state that the primary school provision for 280 pupils is to serve the local community with admission criteria based on post code. It explains that those nearest the school have priority of entry.

Background

11. The School is an Academy Free School for boys and girls and is currently admitting children aged 4 to 8 years. Sixty places were offered when the School opened in 2011 and a further 60 in 2012 making a total roll of 120 pupils. The School will develop gradually into a primary school for children aged 4 to 11 years with eventual capacity for 280 pupils in classes of 20 pupils.

12. The School currently occupies part of the ground, first and second floors of a building leased from the Dockland Settlements in East Ferry Road, London, Millwall, Isle of Dogs.

13. The Funding Agreement confirms that in drawing up admission arrangements the Academy Trust will consult with the local churches of Quaystone Church, St Peter's Barge, City of Peace Community Church and St Luke's Church, who will together constitute the relevant faith body.

Consideration of Factors

14. The first element of the objection, is that arrangements were not determined or forwarded to the LA by the date required by the Code and the objector cites paragraph 1.47 of the Code which says, '.....Admissions authorities **must** send a copy of their full determined arrangements to the local authority as soon as possible before 1 May.'

15. When changes are proposed to arrangements, admission authorities must undertake a consultation for a minimum of eight weeks between 1 November and 1 March in the determination year. Arrangements must be determined by 15 April every year, even if they have not changed from previous years and consultation has not been required. Admission authorities must then send a copy of their full determined arrangements to the LA as soon as possible before 1 May.

16. The School has acknowledged that its arrangements had not been determined by 15 April 2012. The governors state that had they been aware of the requirement for the new school to consult immediately upon opening in September 2011, in order to determine future arrangements for the academic

year two years ahead, they would have complied with that duty. As soon as the oversight was pointed out in September after the previous referral by the objector, they quickly moved to formally determine the arrangements for 2013 and this is recorded in minutes of the governing body meeting held on 27 September 2012.

17. Whilst the governors fully accept the fact that this situation was in contravention of the Code they state that they acted swiftly to comply with mandatory requirements and are now unable to see the point of an objection to a matter that they have already dealt with.

18. In response to the earlier referral in August about the School's arrangements, the objector was advised by the Office of the Schools Adjudicator (the OSA) that because the School's arrangements had not been properly determined as required by section 88C of the Act, it was not possible for that referral to be formally considered or for any outcomes to be recorded in a written determination. The right to refer objections to an adjudicator under section 88H of the Act applies only where those arrangements have been determined under section 88C. The OSA notified the objector on 1 October 2012 that the governing body had, subsequent to the referral, formally determined its arrangements for 2013 and had published them as required on the School's website.

19. It is evident then, that as the governors had not determined the arrangements by the due date and this fact was known by the objector, then governors could not possibly have forwarded their arrangements to the LA by 1 May 2012. While on the one hand I appreciate the School's view that this matter has already been dealt with, nonetheless I also fully accept that this objection could not have been brought by the objector until such time as arrangements had been properly determined; and that the points made by the objector in relation to this particular issue are valid and for these reasons I therefore uphold this element of the objection.

20. The second element alleges that arrangements discriminate against disabled children, as a sentence in the preamble to the Admissions Policy makes a specific point about the premises and states that the School does not have any specific units or facilities for pupils with physical disabilities. The objector cites paragraph 1.9h of the Code which explains that it is for admission authorities to formulate their admission arrangements but they must not discriminate against or disadvantage disabled children or those with special educational needs.

21. In its response to the objection the School says that this sentence is simply a statement of fact about present facilities. The premises are currently leased and in the first year of operation there was no ground floor accommodation of any kind for pupils. For parents of physically disabled children who are trying to decide on the most appropriate school, the School believes this is helpful information. The governors explained that the hall which is used for assemblies and some lessons is on the first floor so all children have to use the stairs every day. When the School first opened, the governors installed a stair-lift between the ground and first floors to provide

accessibility. They point out that they also had a strategic management plan for accessibility for the short period between the official opening of the School on 13 September and the installation of the lift on 27 September 2011 to accommodate the needs of any pupil, staff or parents who might have a disability or who might become disabled during that period. When one pupil had a foot operation and was confined to a wheelchair for a number of weeks last year, the lift was used every day.

22. When I visited the School I saw for myself that accommodation is on three floors with steep, narrow external staircases to classrooms and to the assembly hall on the first floor and there is no elevator lift. The governors advised me that in their view the arrangements do not discriminate against disabled children and that every application from a parent or carer with a child who had a physical disability would be considered for a place on the basis set out in the Policy.

23. Admission authorities must comply with the relevant law as well as acting in the accordance with the provisions of the Code and I will therefore look first to guidance from related legislation. Under section 85(1) of the Equality Act 2010 admission authorities have a duty not to discriminate against disabled children and prospective pupils in the arrangements they make for deciding who is offered admission to the school; or in the terms on which they offer to admit a disabled child to the school; or by refusing to admit a disabled child. When looking at arrangements adjudicators also consider whether admission authorities have had due regard to the need to eliminate discrimination, advance equality of opportunity and so on in accordance with the public sector equality duty (section 149 of the Equality Act). However it is not the function of the adjudicator to consider whether a school is meeting obligations other than those that are relevant to admissions arrangements (for example in section 85(2) of the Equality Act not to discriminate in the way in which it provides education or affords a pupil access to a benefit or service).

24. The statement in the policy to advise prospective parents that the School currently has no dedicated specialist facilities to meet the needs of children with physical disabilities, is an accurate and honest statement by the governing body, made to comply with the requirement of the Funding Agreement. There is no question of this statement operating so as to vary the arrangements or the terms on which the School offers to admit a disabled child, or of the School refusing to accept an application for admission from a disabled child. I think it is notable that the very next sentence in the preamble to the policy states that, 'Canary Wharf College will comply with the Schools Admissions Code'.

25. In additional notes in the policy the governors go on to explain that they include reference to the parents', carers' or other family members' medical conditions or to the family's social needs. I am satisfied that there is nothing in the description of the published admission number or the oversubscription criteria that discriminates against children with disabilities. I did note however, that the Funding Agreement for the School states in paragraph 4 of Annex C that, 'In addition to complying with the duties imposed upon the governing bodies of maintained schools set out in The Education (Special Educational

Needs) (Information) Regulations 1999 (as amended from time to time), the Academy Trust must ensure that the Academy's website includes details of the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and the facilities provided to assist access to the Academy by disabled pupils (disabled pupils meaning pupils who are disabled for the purposes of the Equality Act 2010).

26. The School accepts that prospective applicants who might be unfamiliar with the layout of the current premises would benefit from additional information. The governors have already agreed and made an amendment to information on the website to in order to provide greater clarity for parents. They have advised the LA to ensure that information about the School, used by the LA reflects that now displayed on the School's website.

27. It is not unlawful, nor a contravention of the Code that the School occupies buildings that were not purpose-designed for the education of young children. In attempting to convey the reality of the building and its present level of accessibility, it is unfortunate that the School had not also described the layout of the premises on three floors, the external staircases or the availability of the chair lift, to completely fulfil the requirements of the Funding Agreement. However I am not persuaded that there is anything about the arrangements that is discriminatory in relation to disabled applicants or evidence that the admission authority has not taken account of its public sector equality duty and for these reasons I do not uphold this element of the objection.

28. The final element of the objection contends that the School gives contradictory and misleading information about their admission procedure in the current public consultation documents displayed on the School's website. This states that the primary school provision for 280 pupils is to serve the local community with admission criteria based on post code. It explains that those nearest the school have priority of entry. In the objector's view it was misleading for the School to avoid reference to the priority given to faith places in the public consultation information. Instead the information says that 'those living nearest to the school have priority of entry'. The objector says that anyone reading the public consultation page would be unaware that this is not the case, unless they also read the Admission Policy for the school.

29. The School's view is that there is a comment in the consultation information about the proposals for the new school building which says, 'The full primary school provision is for 280 pupils to serve the local community with admission criteria based on post code, that is to say, those nearest the school have priority of entry.' They state that this is accurate and is not in any way intended to be misleading as the School is there to serve the local community and 85 per cent of current pupils are resident on the Isle of Dogs, a figure that is expected to rise further as the effects of the start-up arrangements recede. Both Faith places and Community places have oversubscription criteria based on distance from a local reference point and this is what they intended to convey in a shorthand way by making mention of the '...criteria based on post code'.

30. The governors go on to add that the consultation information is about the premises and was never intended to reproduce the Admissions Policy. They merely intended to mention that the Academy is a local school for local children. The simple reference does not go into the difference between Faith and Community places, but neither does it attempt to explain priority for siblings or any of the other issue. In any event, even if the shorthand is felt by the objector to be misleading, it does not affect the Admissions Policy which is strictly adhered to.

31. When parents visit the School's website the home page directs them clearly via a dedicated tab towards the full admission arrangements. It also invites them to visit the School to see the new school designs, a separate issue. In my view the public consultation referred to by the objector is not actually related in any way to changes to future admission arrangements but rather is about building and redevelopment proposals. While I accept that there is reference to the priority for local children, I feel that the School is entitled to use this term as the majority of children, 85 per cent, are resident within the Isle of Dogs. I agree with the School that the premises consultation documents on the website do not replace the determined arrangements and that these in turn are very clear. For these reasons I do not uphold this element of the objection.

Conclusion

32. With regard to the three elements of the objection I have concluded that the arrangements do not fully comply with legislation and the Code. I have therefore determined for the reasons given above that I should partially uphold the objection in relation to the first element of the objection, in that the mandatory requirement to determine and publish arrangements within the prescribed timeframe set was not met.

33. However, I do not uphold the objection in the second and third elements in that I can find no evidence of discrimination against children with disabilities or that the governors misled parents in stating that the School made provision for local children in documents which formed part of its formal consultation about the redevelopment of the premises.

Determination

34. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing body of the Academy Trust of Canary Wharf College.

Dated: 13 December 2012

Signed:

Schools Adjudicator: Carol Parsons

