



**DETERMINATION**

**Case reference:** ADA3143

**Objector:** A member of the public

**Admission Authority:** The Russell Education Trust for the Turing House School, Teddington

**Date of decision:** 7 June 2016

**Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2017 determined by the Russell Education Trust for Turing House school, Teddington.**

**I have also considered the arrangements in accordance with section 88I(5). I determine that there are other matters which do not conform with the requirements relating to admission arrangements.**

**By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.**

**The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by an individual (the objector) about the admission arrangements for September 2017 (the arrangements) for Turing House School (the school). The school is an academy school for children aged 11 to 19. The objection is to the consultation undertaken by the school and to the clarity, fairness and reasonableness of the distance based oversubscription criterion in the arrangements.

**Jurisdiction**

2. The terms of the Academy agreement between the Russell Education Trust (the trust) and the Secretary of State for Education require that the admissions policy and arrangements for the school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined on 23 February 2016 by the trust, which is the admission authority for the school, on that basis. The objector submitted her objection to these determined arrangements on 9 May 2016. The objector has asked to have her identity kept from the other parties and has met the requirement of regulation 24 of the

School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of her name and address to me. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

## **Procedure**

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
  - a. the objector's form of objection dated 9 May 2016;
  - b. the school's response to the objection and supporting documents;
  - c. comments on the objection from the London Borough of Richmond upon Thames which is the local authority (the LA) for the area in which the school is located and supporting documents;
  - d. the free school application for the school;
  - e. a map of the area identifying relevant schools;
  - f. confirmation of when consultation on the arrangements last took place;
  - g. copies of the minutes of the meeting at which the trust determined the arrangements; and
  - h. a copy of the determined arrangements.

## **The Objection**

5. The objection is in two main parts, the first concerns four aspects of the consultation on the arrangements which the objector considered did not meet the requirements of paragraphs 1.44 and 1.45 of the Code. The four aspects are:
  - conclusions drawn on the basis of the identification of responses as being from parents of primary school children;
  - lack of consultation with people living in the area where the school is planned to be located;
  - changes made to the consultation material on the school's website during consultation; and
  - consultation with faith leaders when the school is not a faith school.
6. The second part of the objection concerned the distance based oversubscription criterion. This uses two points from which distance is measured to determine priority for places if the school is oversubscribed. The objector said this did not comply with paragraph

1.8 of the Code. She argued that the choice of one point was not clearly explained and the proportion of places allocated on the basis of proximity to the two points was not reasonable. The objector said this led to discrimination against an ethnically diverse area with relatively low socio-economic status.

7. The objector also referred to a number of terms used in the arrangements that she considered were not defined or were unclear.

### **Other Matters**

8. When I considered the arrangements as a whole it appeared to me that the definition of previously looked after children did not reflect the introduction by the Children and Families Act 2014 of child arrangements orders which replace residence orders. It also appeared to me that the arrangements did not include the requirement, found in paragraph 2.17 of the School Admissions Code, for admission authorities to make clear in their arrangements the process for requesting admission outside of the normal age group.

### **Background**

9. The school is named after Alan Turing who lived and worked nearby. It is a free school established by a group of parents in response to a shortage of places in south west Twickenham and the surrounding area. The parents worked with the trust leading to the school opening in September 2015 in an adapted building in Queens Road, Teddington. This is a temporary location and it is proposed that the school will move to new buildings on a site in Hospital Bridge Road, Heathfield by September 2018. The straight line distance between the two sites is about three and a half kilometres.
10. The school plans to have an intake of 150 pupils each year; however, the current published admission number (PAN) is 100 reflecting the constraints of the current site. The school is oversubscribed, although not from first preferences, and the first five oversubscription criteria can be summarised as:
  - Looked after and previously looked after children.
  - Children with exceptional medical or social needs.
  - Founders' children.
  - Siblings of children already on roll.
  - Children of staff who meet specified conditions
11. The remaining places are allocated on the basis of the distance from the child's home to one of two points each defined by a ten figure grid reference. Twenty per cent of these places go to children living closest to the planned permanent site of the school and the rest to those living closest to an "Admissions Point" in Somerset Gardens, Teddington.

### **Consideration of Case**

#### Consultation

12. In paragraph 1.42 the Code says “*When changes are proposed to admission arrangements, all admission authorities **must** consult on their admission arrangements (including any supplementary information form) that will apply for admission applications the following school year.*” Subsequent paragraphs of the Code set out when and for how long consultation must take place as well who must be consulted.
13. One of the matters consulted on by the school for the September 2017 intake was whether the proportion of places allocated on the basis of distance from the two points was balanced appropriately. The objector’s first concern was that “*Although the overwhelming majority who responded to the consultation did not agree with the 80:20 split the report by Turing House School focused on the responses by the ‘primary parents’. However, the number of primary parents that responded was not the same number as published in the report as there were primary parents that responded as a parent applying for 2017 or as a secondary parent. Therefore, the conclusions made by Turing House were based on incorrect data.*” She referred me to a report on the school’s website entitled “*Admissions Consultation for September 2017 Evaluation and Outcome*”.
14. In its response to this part of the objection, the school also referred me to the same document and to a “*Frequently Asked Questions (FAQ)*” page in the section about consultation on its website. This document gives more detail about the consultation responses addressing questions received by the school.
15. I have considered both of these documents which contain links to maps and other background information which I found helpful in coming to understand the circumstances of the school and the community it serves.
16. In the report on consultation respondents are classified as parents of a 2017 applicant, parents of younger primary school children, parents of secondary school children or other individuals. It is of course possible for someone to fall into more than one of these categories, this is acknowledged by the school in the FAQs where it says “*we assumed that families with children of mixed ages would select the category that was most relevant to their response.*” I have found no discrepancies in the numbers in the report which, as is the usual practice in consultation, puts emphasis on the comments made by respondents and contextual factors as well as the number of views expressed on each option.
17. While the school may have been able to establish more precisely the status of parents who responded, I do not find that this undermines the consultation process undertaken by the school.
18. The objector considered that the school “*made no effort to promote the consultation and engage with people in the Whitton/Heathfield area at all*” and so failed to comply with paragraph 1.44 of the Code which says “*Admission authorities **must** consult with:*

- a) *parents of children between the ages of two and eighteen;*

*b) other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admissions;*

*c) all other admission authorities within the relevant area (except that primary schools need not consult secondary schools);*

*d) whichever of the governing body and the local authority who are not the admission authority;*

*e) any adjoining neighbouring local authorities where the admission authority is the local authority; and*

*f) in the case of schools designated with a religious character, the body or person representing the religion or religious denomination.”*

19. The objector referred to the list of consultees in the FAQs and to the consultation being covered in local newspapers and social media saying *“the school itself did not promote the consultation in the area that it is to be located.”*
20. The school also referred to the list of consultees in the FAQs and to local guidance from the LA. The list of consultees includes the required admission authorities, schools, local elected representatives, parents of children at the school, *“2085 local parents and other interested people, groups, trusts and associations”* registered on the school’s mailing list and *“660 Twitter followers”*. While there may be other means of promoting the consultation, I think this represents a reasonable attempt by the school to do so. The fact that it elicited over 400 responses mostly from parents could be due to coverage in the local press as well as the school’s efforts, but is evidence that the consultation was effectively disseminated. With almost half of the responses listed on the FAQs coming from Whitton and Heathfield, the area in which the school’s long-term site is situated is well represented.
21. The objector’s third issue with the consultation process concerned changes made to the consultation document published on the school’s website. The objector said the document was first published on 2 December 2015 and then relaunched on 9 December 2015 with a question about defining an *“Admissions Priority Area”* removed. The objector provided me with pictures showing two different sets of questions on the school’s website.
22. In its response the school admitted that *“Due to an error, an early draft of the consultation questions was discoverable on line for a few hours on 2 December 2015.”* The school said this draft was seen and circulated through social media and led to ten responses before the error was corrected. These ten responses were included in the report on consultation referred to above.
23. Paragraph 1.43 of the Code requires that consultation take place for a minimum of six weeks between 1 October and 31 January and paragraph 1.45 requires publication of proposed arrangements on the school’s website for the full consultation period. There is no dispute that the arrangements were on the website from 9 December 2015 to 27 January 2016, the requirements of paragraph 1.43 and 1.45 were

therefore met. While there was an error, the way the school handled the consequences was appropriate and it did not undermine the consultation process.

24. The objector's final comment on consultation was that the school consulted faith groups although it is not a faith school. The Code does not require schools which do not have a religious character to consult faith groups, but it does not forbid them from doing so. Indeed, as the school is of the opinion that faith groups have an interest in the arrangements paragraph 1.44b quoted above requires the school to consult them.

25. I do not uphold any part of the objection concerning the consultation process undertaken by the school.

#### The Distance Based Oversubscription Criterion

26. As set out above, after allocating places to looked after and previously looked after children, those with exceptional social or medical need, siblings, founders' children and children of members of staff, most of the places at the school are allocated on the basis of the distance from the child's home to one of two points each defined by a ten figure grid reference. Twenty per cent of these places go to children living closest to the planned permanent site of the school and the rest to those living closest to an "Admissions Point" in Somerset Gardens, Teddington. Of the 125 places allocated for September 2016, 119 were allocated on the basis of the distance criterion.

27. The objector set out a number of ways in which she considered the use of two points from which distance is measured and the balance of places allocated between them did not comply with paragraph 1.8 of the Code. This paragraph says "*Oversubscription criteria must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child. Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.*"

28. The first point made by the objector is that there is more need for secondary school places in the vicinity of the future school site. She referred me to an undated impact assessment on the gov.uk website which says that by 2018 there is a forecast shortfall of 319 places around the school's current site and a shortage of 682 places around the new site.

29. The school said that it had been established to serve the area around the admissions point and provided me with data from the LA which was used to support the free school application. I have also looked at the LA's school place planning strategy for 2015 to 2024; for secondary provision this considers the borough as a whole and stresses the importance of finding new secondary school sites within the borough, not in any specific part of it. In its response to the objection the LA said

that the opening of this school and another free school provides sufficient places in the western half of the borough for the period of its strategy which is up to 2024.

30. The objector's next point was "*There is plenty of data from Richmond Council available to show that the area around the permanent school site is more ethnically diverse, with a larger proportion of individuals of different faiths. The socio-economic status is on average much lower and there is a higher degree of child poverty in the area. The Turing House admissions policy is clearly discriminating against those children by only allowing 20% of children from around the permanent school site and selecting 80% from more affluent, less ethnically diverse areas.*" She provided me with demographic data from the LA to support this view.

31. In response the school pointed out that allocating 80 per cent of places on the basis of proximity to the admissions point does not mean that that 80 per cent of the intake will come from the immediate vicinity of the admissions point. It provided me with maps showing the distribution of the school's intake in 2015 and 2016.

32. Finally the objector said "*The reasons for the 80/20 split are not reasonable nor fair. The choice of secondary schools in [sic] for individuals living in the Whitton/Heathfield areas is severely limited.*" The objector then cited the shortage of places in the neighbouring borough of Hounslow and other options for parents in the area.

33. In response the school said "*our admissions policy is in line with our stated aim for our school intake to be representative of the area the school was established to primarily serve, which is the Middlesex side of Richmond Borough. Students from Heathfield and Whitton are not being excluded from admission to the school because many are likely to live within the catchment distance of either our Admissions Point or the planned permanent school site (or indeed both if the two catchments overlap).*"

*In 2017 our school will still be located at its opening site in Teddington. We have committed to reviewing our policy again for 2018. By the time that consultation takes place we expect to have greater certainty about the planned permanent site of the school.*"

34. When consulted on the arrangements, the LA told the school that "*there is no justification for continuing the 20:80 ratio now*". It then set out reasons for this view including the location of the future site, the distribution of the 2015 intake and the establishment of another free school in the borough. The LA suggested that the establishment of a new school in Heathfield (ie the area of the school's proposed permanent site) would be more acceptable to local residents if more places were available to them; it did not, however, suggest any alternative proportion. The LA repeated the same arguments in its submission to me. Local authorities are required by paragraph 3.2 of the Code to refer admission arrangements to the adjudicator if they are of the view or suspect that they are unlawful. I have noted that the LA did not do so, nor did it comment on any other part of the objection.

35. Because the school is new, no relevant data is available in the DfE

performance tables to allow me to compare the level of free school meals or English as an additional language at the school to the rest of the LA. I have therefore relied on the data and references provided by the objector. It is clear from this that Heathfield has the highest proportion of members of ethnic groups excluding white British and has a higher level of child poverty than most of what is in the LA's own words a "*prosperous borough*".

36. I am mindful that the school was established and approved by the Department for Education (DfE) to serve a specific part of the borough where parents considered there was limited access to coeducational, non-faith secondary schools. It was recognised from the outset that there would be difficulties in finding a site for the school in the area where the need had been identified. The idea of using an admissions point to prioritise places for children living within the area of demand was included in the free school application made in 2014. It was also proposed in that application that if the permanent site was not within the area which the school was intended to serve, a proportion of places should be allocated to children living near to the eventual site.
37. It is not unusual for schools to be established to serve a particular community. It appears reasonable to me that a school established to serve a particular geographic community should be able to set oversubscription criteria that prioritise children living in that community even if the school is not located in that geographic area.
38. By allocating a proportion of the places on the basis of proximity to the future site, the school acknowledged that families living near the future site would have some expectation of priority for places. To reserve a proportion of places for allocation on this basis seems analogous to faith schools reserving a proportion of their places for local children who are not part of the faith community. This is an acceptable practice if carried out fairly.
39. I have noted that while 20 per cent of places are allocated on the basis of proximity to the school site, this does not mean that only 20 per cent of pupils will come from the area around the school. Depending on the distribution of applicants, some children living close to the future site might also qualify for a place on the grounds of proximity to the admissions point. The maps on the school website show the 2016 intake is distributed across the borough and from these maps I have estimated that about 60 per cent of the intake live closer to the admissions point and 40 per cent live closer to the future school site.
40. I do not therefore think that less affluent and more ethnically diverse children living near the new site are unfairly disadvantaged; indeed they have greater advantage than if the school's future location was nearer the admissions point, or in another area of the borough. The ratio appears to provide sufficient places to meet demand from children living in the target community and to allow access from other parts of the borough. While the LA may have reservations about the proportion of places allocated on the basis of proximity to each point, it did not feel strongly enough about the issue to lodge its own objection with the adjudicator. The principle of the school being established to serve one geographic area justifies the current arrangements.

41. On the school's website it says that the admissions point is the point that is farthest from any other local co-educational school. It explains how the position of the admissions point was decided. *"The Admissions Point was identified with Microsoft Excel Solver, using Linear Programming, an optimisation technique developed by a Russian contemporary of Alan Turing. To put it simply, the algorithm tried many different British National Grid points within the polygon formed by all of the other mixed secondaries, until it found the point that was furthest from all of them. Of course, we could have done the same thing by hand, with a map and a ruler, but it would have taken a very long time and probably would have been a lot less reliable!"* The objector asked how many parents would understand that explanation.
42. The school said the explanation was provided for interest and is not part of the policy. I have looked at the position of the admissions point on a map and it appears to me to be consistent with the intention to be as far from other schools as possible and this is clearly explained in the paragraph quoted above together with links to a practical use of mathematics for those interested. I find that this explanation is clear and sound.
43. The objector also argued that the arrangements were not clear because they provided a grid reference, but no address, map or post code to indicate where measurements were taken from. The school responded that the address of the admission point is given in the notes which follow the oversubscription criteria and it is shown on maps on the school's website.
44. I am satisfied that the two points are accurately defined because a ten figure ordnance survey grid reference locates a point to a one metre square. While, as the objector points out, an address is not given for the admission point, one is given in the notes which appear immediately underneath the criteria and the note is linked to the specific oversubscription criterion by the symbol "ii". While not in the arrangements the school provides a map in the admissions section of its website which shows both the admission point and the future school site. I am satisfied that a parent would be able to identify both points and be able to understand where they live in relation to them.
45. The objector also drew my attention to the use of the acronym SEND in the arrangements as it was not defined, and that the arrangements did not set out details of how the random allocation process used as a tie-breaker would be carried out and who would provide independent supervision. The school has offered to clarify both of these points. I do not find either issue sufficiently unclear to prevent the arrangements from complying with the Code and I do not uphold the second part of the objection.

#### Other matters

46. When I considered the arrangements as a whole it appeared to me that the definition of previously looked after children did not reflect the introduction by the Children and Families Act 2014 of child arrangements orders which replace residence orders. It also appeared to me that the arrangements did not include the requirement, found in paragraph 2.17 of the School Admissions Code, for admission

authorities to make clear in their arrangements the process for requesting admission outside of the normal age group.

47. When I raised these matters the school immediately proposed suitable amendments to the arrangements.

### **Summary of Findings**

48. I find it reasonable for a school that was established to serve a particular geographic area to set oversubscription criteria which prioritise children living in that area. By allocating a proportion of places based on proximity to the school site, the school has provided an appropriate level of opportunity for children who live near the school to obtain places. The oversubscription criteria are clear and objective and meet the requirements of paragraph 1.8 of the Code.

49. I also find that the consultation undertaken by the school prior to determining the arrangements met the requirements of paragraphs 1.42 to 1.45 of the Code. For these reasons I do not uphold the objection.

50. There are two matters on which the arrangements do not comply with the Code which the school has proposed to amend.

### **Determination**

51. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2017 determined by the Russell Education Trust for Turing House school, Teddington.

52. I have also considered the arrangements in accordance with section 88I(5). I determine that there are other matters which do not conform with the requirements relating to admission arrangements.

53. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

Dated: 7 June 2016

Signed:

Schools Adjudicator: Phil Whiffing