



Office of  
the Schools  
Adjudicator

### **DETERMINATION**

**Case reference:** ADA3118

**Objector:** Essex County Council

**Admission Authority:** The Governing Body of William de Ferrers School, Essex

**Date of decision:** 16 August 2016

#### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2017 determined by the governing body for William de Ferrers School, Essex.**

**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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 30 September 2016.**

#### **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 Essex County Council, (the objector), about the admission arrangements (the arrangements) for William de Ferrers School (the school), in Essex, the local authority area (the LA), an academy school for 11 to 18 year olds for September 2017. The objection concerns a reduction in the Published Admission Number (PAN) for Year 7 (Y7).

#### **Jurisdiction**

2. The terms of the Academy agreement between the academy 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 by the governing body, which is the admission authority for the school, on that basis. The objector submitted its objection to these determined arrangements on 3 May 2016. 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.

### **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 3 May 2016 and supporting documents;
  - b. the school's response to the objection and supporting documents;
  - c. maps of the area identifying relevant schools;
  - d. the LA's composite prospectus for parents seeking admission to schools in the area in September 2016;
  - e. confirmation of when consultation on the arrangements last took place;
  - f. copies of the minutes of the meeting at which the governing body of the school determined the arrangements; and
  - g. a copy of the determined arrangements.

### **The Objection**

5. The objection concerns the governing body's decision to reduce the PAN for Y7 for 2017 from 270 to 210. The objector states that this will diminish parental preference, is unfair and creates a potential issue with sufficiency of places.
6. The objector says that the reduction is an unreasonable action by the governing body and is contrary to paragraphs 12 and 14 of the Code which state that *"The purpose of the Code is to ensure that all school places for maintained schools and Academies are allocated and offered in an open and fair way"* and *"In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."*
7. The objector cites paragraph 1.3 of the Code which refers to a strong presumption in favour of an increase to a PAN and argues that the school's reduction of the PAN is de facto a contravention of this paragraph.
8. The objector also refers to paragraph 1.8 of the code which requires oversubscription criteria to be reasonable and fair and, whilst the objector acknowledges that the PAN is not part of the oversubscription criteria, it submits that the general principle applies in this context and that the

action of reducing the PAN is unreasonable and unfair.

9. Finally the objector refers to paragraph 1.10 which requires the governing body to take into account local circumstances when drawing up its oversubscription criteria and, although this refers to the oversubscription criteria, the objector restates that the school's reduction in PAN demonstrates an unreasonable disregard of the forecast need for school places in the local area.

## **Background**

10. The school is a larger than average secondary school for 11 to 18 year olds. There are currently 1669 pupils on roll and the school has a total capacity of 2076. Prior to 2015 the PAN was 312. The PAN was reduced for admissions in September 2015 to 270 and for 2016 was again 270. The school is currently undersubscribed. At a meeting of the governing body on 17 November 2015 it was agreed to consult on a further reduction in PAN to 210. During the consultation, the LA (the objector) expressed concern at this reduction and informed the school that it would accept a reduction to 240 but that any further reduction would result in a formal objection to the Office of the Schools Adjudicator (OSA). A further meeting took place in February 2016. The LA re-iterated the view to the school in March 2016 that a reduction to 240 would be supported. The school submitted the determined arrangements to the LA on 14 March 2016 indicating a PAN of 210.

11. The oversubscription criteria have been in place for a number of years and are, in summary, as follows:

After the admission of children with statements of special educational needs or Education Health and Care plans which name the school:

1. Looked after and previously looked after children.
2. Students attending one of seven named feeder primary schools.
3. Students living in South Woodham Ferrers and those with a Woodham Ferrers postal address (the catchment area).
4. Siblings.
5. Children of staff.
6. All remaining applications on distance.

## **Consideration of Case**

12. The objector cites paragraphs 1.3, 1.6 and 1.10 of the Code. Paragraph 1.3 states that there is a strong presumption in favour of an increase to the PAN; however, this does not preclude admission authorities reducing their PAN as long as this complies with other elements of the Code. Paragraph 1.8 and 1.10 in the Code relate specifically to the oversubscription criteria in arrangements and not to the PAN. I do not

consider therefore that these paragraphs of the Code are relevant to this objection.

13. I have considered the objection as it relates to paragraphs 12 and 14 and particularly that places are allocated in an open and fair way and that the practices and criteria used to decide the allocation of school places are fair, clear and objective. These two paragraphs refer to the arrangements as a whole and are, therefore, relevant to changes in the PAN.
14. An extra-ordinary meeting of the governing body was convened in November 2015 with an agenda item to discuss the reduction in PAN from 270 to 240. At the meeting the, then headteacher put forward the proposal to further reduce the PAN; from 270 to 210. His arguments and reasons for the change can be summarised as follows;
  - the current PAN of 270 is too high as it provides space within year groups and *“this means that we cannot say no to receiving those pupils who are challenging and difficult and who have been moved on from other local schools. This impacts on the education and wellbeing of both staff and pupils of this school.”*;
  - there is a perception among parents if a school is under-subscribed; *“by having space it generates the impression that it is not a popular choice”*;
  - numbers in primary schools are falling and the PAN needs to cater for *“our”* primary schools;
  - numbers for admission in September 2016 stand at 203 [at the time of the meeting in November] which is considerably fewer than the current PAN of 270 or the initial intended reduction to 240;
  - all schools in Mid-Essex [where the school is located] are judged to be good or outstanding and parents need look no further than their local schools. Historically, the school had received pupils from the catchment area of a school which was previously judged by Ofsted to be satisfactory and is now judged to be good;
  - pupils from the Roman Catholic feeder school traditionally go to the Catholic secondary school;
  - the school needs to cater for pupils who live in and around South Woodham; and
  - the site would be better suited to 1300 pupils which would be *“better”* than a school of 2000 pupils which is very large and impersonal and a lower number would create more of a community.
15. The governors unanimously voted in favour of consulting on the proposal to reduce the PAN from 270 to 210. The consultation document stated that the proposal was to reduce the PAN to 210 and said *“this change is proposed in response to falling rolls within the school catchment area*

*which is also reflected in reduced pupil cohorts across other areas of the Chelmsford area.”*

16. The response to the objection from the Acting Headteacher in May 2016 provides six main reasons why it is reasonable to reduce the PAN to 210 and these can be summarised as follows;
  - 1) a PAN of 210 reflects the number of places required to provide sufficient places for the community and the local area that it serves;
  - 2) historically, the school had an inflated intake due to parents choosing for their children to travel from other areas as the quality of their local schools was a concern; this is now not the case and parents are now choosing their local schools;
  - 3) the larger PAN would significantly encroach on the priority admission areas (catchment areas) of other secondary schools;
  - 4) a higher PAN would leave the school exposed to being required to admit a higher number of students who are vulnerable or with challenging behaviour under the Fair Access Protocol than other local schools. The school is proactive in supporting managed moves and has an excellent reputation for supporting vulnerable students however a disproportionate number of challenging pupils could have a detrimental impact on existing students which would be unfair;
  - 5) when families move into the area the children are admitted even if this is above the PAN for the year group. If applications rise above the proposed PAN of 210 then the governors have “*every intention*” to admit children above this number. If local circumstances change then governors would look at changing the PAN in future years although there are no current plans for major building work which might lead to new housing and hence demand for more school places in the area before 2021; and
  - 6) forecast data from the LA for future numbers at the school includes pupils who do not live in the school catchment area.
17. The LA communicated with the school throughout the consultation process. It suggested at the beginning of the consultation that whilst a PAN of 240 is likely to leave little spare capacity it would accept this level of reduction. However any reduction below 240 could lead to difficulties for local children securing a place reasonably close to their home. A number of discussions took place between the school and the LA and even as late as March 2016 the LA re-iterated its view that it would support a reduction to a PAN of 240 but that a determination to reduce to 210 would result in a referral to the adjudicator. Determined arrangements including the PAN of 210 were submitted by the school to the LA on 14 March 2016 and this was acknowledged by the LA on 17 March 2016 prior to the submission of the objection to the OSA on 3 May 2016.

18. The LA says that forecasts indicate that there are no significant falling rolls within the school catchment area nor is there evidence of reduced pupil cohorts across other parts of the Chelmsford area – Chelmsford being the district in Essex in which the school is located. It states that the cohort entering Chelmsford secondary schools in September 2017 is higher than the preceding three years. It acknowledges that historically the school has taken pupils from the catchment area of a particular secondary school (school A) which was judged by Ofsted to be satisfactory prior to its conversion to an academy and that this school is now judged to be good. The LA accepts that applications for school A have increased over the past three years and this has resulted in fewer applications to the school. Paragraph 1.4 of the Code allows a school to admit above its PAN as long as it informs the LA. School A has informed the LA that it will admit 60 pupils above PAN in September 2016. This decision was out of the control of the LA. There is no indication and there can be no certainty that school A will admit over PAN again in September 2017. The LA points out that school A's net capacity figure of 1050 indicates that it could not continue to admit pupils well in excess of its PAN year on year and that it is likely to reach capacity in the school year which begins in September 2018. The LA points out that there are more pupils of secondary school age in the catchment area of school A than the school's capacity; in January 2016 there were 1530 children of secondary school age residing in School A's catchment area of whom 837 (55%) were on roll at school A. The nearest most accessible school to school A is the school which is the subject of this determination. The LA concludes that the demand for places at the school will remain at a level which justifies a PAN no lower than 240.
19. The LA provided forecast figures for admissions for eight years from 2014/15 based on data as at 24 July 2015. The forecast figures take the numbers from the previous five years of potential applicants and use the actual admitted numbers to calculate a factor which shows the percentage of potential applicants who were admitted to the school. It then applies this factor to future potential numbers. These figures show that the expected intake for the school in September 2017 is 240. The LA maintains that this number of places at the school is required for the LA to fulfil its duty under section 14 of the 1996 Education Act, to secure sufficient school places to serve its area.
20. The LA's figures include statistics from the school's seven named feeder schools and three other primary schools which are not in the catchment area of the school. Two of these are in the catchment area of school A and the other is in a different school's catchment area. The school's forecast figures are based on the primary schools within its catchment area and it predicts an admission number for September 2017 of 211.
21. In considering whether or not the arrangements are fair, clear and objective in line with paragraphs 12 and 14 of the Code I have identified four main issues; the consultation process; the LA and school's forecast numbers; the impact of School A's actions; and the school's concerns about in-year admissions.

22. The consultation document stated that the change to the PAN to 210 was in response to falling rolls within the school catchment area and that this was reflected in reduced pupil cohorts across other areas of the Chelmsford area. The LA reports that there are no falling rolls in the school's catchment area or across the Chelmsford district as a whole. I have looked at the admission history of the seven schools identified by the school in their arrangements as feeder schools and find that each one was over-subscribed for admission in September 2015 (the most recent available figures). I can find no evidence of falling rolls in the primary schools and this is confirmed by the LA's figures. The consultation document was misleading in this respect. In addition, paragraph 1.44 of the Code sets out a list of those people and organisations who must be included in any consultation process. The school sent the document to schools and the LA only and this does not conform with the Code. I do not consider that the consultation process used by the school as part of their practice to draw up the arrangements conformed with the Code.
23. The forecast numbers for admission in September 2017 differ between 240 by the LA and 211 by the school. The seven feeder primary schools have a total PAN of 233 and there will be a justified assumption by parents of children attending these schools that they will have a reasonably high chance of success if applying to the school. Historically, not all pupils from the feeder schools have applied for places and the school has taken this into account when forecasting numbers. The school's figure for September 2017 only takes account of the schools within the catchment area and this indicates one pupil over the PAN of 210. This, in itself, would be unfair to the one family whose expectations are that their application will be successful as the child attends a feeder school.
24. Pupils from 21 primary schools were admitted to the school in September 2015. This includes the seven named feeder primary schools. The LA's forecast includes pupils from three schools which are not named feeder primary schools and I have examined the figures to see if it is fair to include proportion of children from these three schools in the forecast numbers for admission to the school. Of the 1669 pupils on roll at the school during the 2015/16 year, 248 of these children (14.9 per cent) attended one of these three primary schools. The school suggests that the pattern of admission from these schools has reduced over time and this is demonstrated by the figures. In the past four years the numbers of pupils being admitted into year 7 (Y7) from these schools has been 46, 46, 36 and 31 (2012 to 2015). Although a reduction, the latest figures remain significant admission numbers and a PAN of 210 would make it very likely that any application for admission from one of these three schools would be unsuccessful. I am of the view that it would be unfair to reduce the parental preferences from these schools in this way. I therefore consider it fair that a proportion of children from these three schools should be included in the forecast figures for admission in September 2017 and it is unfair for the school to decrease the possibility of these places by reducing the PAN to 210. This means that the PAN of 210 is unfair and therefore contrary to paragraph 14 of the Code.

25. The school says it is keen to provide exclusive local provision for children within its catchment area and states that this is a realistic possibility as the nearest accessible school (school A) is now taking a greater proportion of children from its own catchment area; reducing the number applying to the school. It is concerned that school A has agreed to admit 60 pupils over PAN for September 2016 and has increased its PAN from 165 to 180 for September 2017. The school states that it will accept children over PAN if they live in the catchment area. It is clear that the numbers applying to the school have reduced in previous years. These facts do not, however, make it fair for the school's arrangements to be such that only children in the catchment area have a reasonable chance of success when applying for the school as there is a need in the area as a whole for the school to accept some children from out of the catchment area. Paragraph 1.14 of the Code makes it clear that catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school. It is also no solution to suggest that children who live in the catchment area will be admitted above the PAN if required; admission arrangements are in place so that parents can easily understand how places will be allocated (paragraph 14) and they should be open and fair (paragraph 12). Parents should not be expected to rely on the admission authority's discretion in the way suggested. The LA would accept a reduction to 240. Looking at the forecast figures and the numbers applying to school A I consider a reduction further than 240 to be unfair and contrary to paragraph 14 of the Code.
26. In the report to the governing body in November 2015 the headteacher at the time explained that one of the reasons for reducing the PAN was because *"we cannot say no to receiving those pupils who are challenging and difficult and who have been moved on from other local schools"*. In his response to the objection the acting headteacher says that a high PAN *"could leave the school exposed to being required to admit a higher number of students who are vulnerable or with challenging behaviour"*. He goes on to say that the school has an excellent reputation for catering for such children. He provides details of the in-year admissions for the last two school years to demonstrate his concerns. In-year admissions are not within my jurisdiction as an adjudicator but I have analysed the figures as the school has provided them as a justification for the reduction in PAN. These figures show that 24 children were admitted to the school in-year during each of the two previous years. An analysis of these data shows that in 2015/16, 18 in-year admissions were either from Essex schools or were looked after children. I do not have the details of the reasons why these pupils changed schools or whether they were vulnerable or displayed challenging behaviour. All pupils, regardless of their challenges have a right to be educated and, whilst it is true that schools with places are more likely to be required to take new admissions, I do not consider 18 children across four year groups being admitted during an academic year to a school of 1669 pupils (1.01 per cent) to be unrealistic or unfair. I therefore do not consider this a fair justification of why the PAN should be reduced to 210.

## **Summary of Findings**

27. As part of the process of drawing up the arrangements, the school undertook a consultation process which was misleading because it stated that the proposed reduction in PAN to 210 from 270 was due to falling rolls in the primary schools and I can find no evidence (and the school has provided none) that this is the case. In addition the consultation did not comply with the Code (paragraph 1.44) in terms of the participants in the consultation.
28. I acknowledge that changes to the admissions of school A is impacting on numbers in the school and that a reduction in PAN might be appropriate. I have analysed the forecast figures from the school and the LA and conclude that the reduction of the PAN to 210 would significantly reduce parental preference from schools where children have historically been admitted and this is unfair. It is not fair that the school should seek to admit only those children living in the catchment area as there is clearly a need for some places to be offered to children not living in the catchment area and the school has the space to provide for them and their parents would like them to go there. I also understand that a reduction in PAN to 210 creates a potential issue with sufficiency of places in the area as a whole. I consider a reduction in PAN further than 240 to be unfair and contrary to paragraph 14 of the Code. I therefore uphold the objection.

### **Determination**

29. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2017 determined by the governing body for William de Ferrers School, Essex.
30. 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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 30 September 2016.

Dated: 16 August 2016

Signed:

Schools Adjudicator: Ann Talboys