



## **DETERMINATION**

**Case reference:** ADA3477

**Objector:** Suffolk County Council

**Admission Authority:** Ormiston Academies Trust for Stoke High School – Ormiston Academy, Ipswich, Suffolk

**Date of decision:** 20 September 2018

### **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 2019 determined by Ormiston Academies Trust for Stoke High School – Ormiston Academy in the local authority area of Suffolk.**

**I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.**

**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 Suffolk County Council, about the admission arrangements for September 2019 (the arrangements) for Stoke High School – Ormiston Academy which is an academy school for children aged between the ages of 11 and 16. The objection is to the reduction in the published admission number (PAN) from 172 in 2018 and previous years to 143 for admissions in 2019.
2. The parties to this objection are:
  - a. Ormiston Academies Trust (the trust) which is a multi-academy trust and is the admission authority for Stoke High School – Ormiston Academy (the school); and
  - b. Suffolk County Council which is the local authority area in which the school is situated and the objector (the local authority).

## **Jurisdiction**

3. The terms of the academy agreement between 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 by the trust on that basis.
4. The local authority submitted its objection to these determined arrangements on 11 May 2018. 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**

5. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
6. The documents I have considered in reaching my decision include:
  - a. the local authority's form of objection, supporting documentation and responses to my questions;
  - b. the school's response to the objection, supporting documents and responses to my questions including the funding agreement for the school;
  - c. information on the websites for the Department for Education (DfE), Ofsted, the school and the local authority;
  - d. maps of the area identifying relevant schools and the areas used by the local authority for school place planning;
  - e. extracts from the minutes of the meeting at which the trust determined the arrangements; and
  - f. a copy of the determined arrangements.

## **The Objection**

7. The local authority has objected to the reduction in the PAN from 172 for 2018 and previous years to 143 for 2019. The local authority has said that there is growing demand for secondary school places in the area and there will be insufficient places for those children seeking a school place in future years if the PAN remains as determined.

## **Other Matters**

8. When I considered the arrangements I found other matters which did not meet the requirements of the Code. These are (with the most relevant paragraphs of the Code in brackets):

- a. There are two definitions for siblings in the arrangements and these appear to be inconsistent and so make the arrangements unclear (14, 1.8 and 1.11).
  - b. The arrangements contain a map of what is said to be the “*catchment area*” for the school. The oversubscription criteria do not include use of a catchment area so the inclusion of a map which is purported to be of a catchment area may make the arrangements unclear (14 and 1.8); and
  - c. The arrangements list feeder schools. The oversubscription criteria do not include the use of feeder schools so naming these schools as feeder schools may make the arrangements unclear (14 and 1.8).
9. The school has told me that it intends to address these matters which I welcome. I will therefore not refer to them further other than to make clear that the Code requires that the arrangements be amended to address the points set out here.

## **Background**

10. The school is situated in the south of the town of Ipswich which has eight state funded secondary schools. The school was judged by Ofsted to require improvement when it was inspected in March 2018. The Ofsted report provided information about the school as follows:
- *“It is a smaller-than-average secondary school. The majority of pupils are White British. The school continues to have an increasing number of mid-year admissions of pupils who are at an early stage of learning English, having only recently arrived in the country.*
  - *The proportion of pupils eligible for the pupil premium is well above the national average.*
  - *The proportion of pupils who have SEN and/or disabilities is above the national average.”*
11. The school consulted in the winter of 2017/18 on reducing its PAN from 172 in 2018 and previous years to a PAN of 140 for 2019. The local authority says that it sent a letter formally opposing the reduction during the consultation but the school said that it did not receive this letter. The trust determined the arrangements with the PAN set at 143.
12. The oversubscription criteria in the arrangements can be summarised as:
- a. Looked after and previously looked after children
  - b. Children with an exceptional medical, social or other need
  - c. Siblings of existing students
  - d. Students who live closest to the school.

## Consideration of Case

13. The local authority's objection to the reduction in the PAN from 172 to 143 is that the places removed will be required in the future. Paragraph 3.3 of the Code prohibits, amongst other matters, an objection against an admission authority for keeping the same PAN (apart from in particular circumstances). The school could maintain the PAN at 143 after 2019 and there is no power for any other body to object to it after this point. I will therefore consider the need for school places over time, not just for 2019.
14. I will consider below the evidence for the demand for places, the statutory and regulatory framework and the school's reasons for reducing the PAN. I asked the local authority to provide details of the actual numbers of children joining the school and nearby schools. The numbers on roll for Year 7 (Y7) for 2017 show that five of the eight secondary schools in Ipswich are either full or nearly full. One school admitted 27 children over its PAN for 2017 which is highly likely to have increased the number of surplus places at other schools. Three schools, of which Stoke High School - Ormiston Academy is one, had 175 surplus places between them for Y7 for 2017. Thirty-eight of these places are at the school. That means that for entry to Y7 in September 2017 a PAN of 143 would have met the demand for places.
15. Table 1 below shows that on 4 June 2018 there were fewer than 143 (the PAN for 2019) students in each year group at the school. Indeed, the mean average across the five year groups is just under 130 students in each year group. This figure is below the PAN set for 2019 of 143 and significantly below the PAN set in 2018 and previous years of 172. The school has had surplus places for some years.

Table 1: numbers of students on roll at the school on 4 June 2018

Year 7	Year 8	Year 9	Year 10	Year 11	Total
131	133	129	130	124	647

16. The historical data does not support the need for a PAN set at 172 so I asked the local authority about its concerns. The local authority said that secondary pupil numbers were beginning to rise and I set out details of the forecast figures below. First, however, it is helpful if I outline the local authority's forecasting methodology, in part because the school has expressed concerns about the accuracy of this. The local authority told me that it plans at different levels: for Suffolk, for the town of Ipswich and for the area of the school. The school is in the south west of the town as is another secondary school, Chantry Academy. The local authority considers these two schools together in planning terms because children living in the south west of the town can travel to either of them easily.
17. The school has questioned the accuracy of the forecasts and so I asked the local authority to respond. The local authority was able to

demonstrate to me that across the two schools the forecasts were within two per cent accuracy. The local authority did acknowledge that its forecast for 2014 was out by nearly 10 per cent but was able to show that the forecasts across the two schools have been quite accurate in the years since 2014. It is the relative popularity between the two schools, Chantry Academy and Stoke High – Ormiston Academy, which has changed with Chantry Academy having enjoyed greater popularity in the past few years.

18. The local authority explained that its methodology for forecasts includes considering the numbers of children living in the area and attending local primary schools compared with the number of children who join the school. The school does not now have a catchment area in its oversubscription criteria but the local authority uses what used to be the catchment area of the school as a basis for its school place planning at this local level. Similarly, the school no longer has feeder schools in its oversubscription criteria but the local authority uses what used to be the feeder primary schools to inform its forecasts.
19. The proportion of children moving from the local primary schools to each secondary school is calculated over four years to create a weighted average to inform the calculation of demand. This takes into account movement to schools outside Ipswich and to the independent sector. The local authority explained that there is a nearby rural school, Holbrook Academy, which has capacity for more children than live in its area and at which some Ipswich children secure places. This too reduces the number of children who might have attended the school. The forecasts in table 2 below, using the data provided by the local authority, take these matters into account. The local authority has also said that there is significant planned growth in the number of houses in and around Ipswich which will increase the demand for secondary school places but this is not yet included in the forecasts.

Table 2: local authority forecasts for demand for secondary school places in Ipswich (not including any increase from potential housing developments)

	Consolidated PAN of all Ipswich secondary schools as at 2018	Anticipated demand	Forecast surplus/deficit	Forecast surplus/deficit with overall PAN reduced by 29 to 1653
2017	1682	1526	156	n/a
2018	1682	1562	120	n/a
2019	1682	1625	57	28
2020	1682	1660	22	-7

	Consolidated PAN of all Ipswich secondary schools as at 2018	Anticipated demand	Forecast surplus/deficit	Forecast surplus/deficit with overall PAN reduced by 29 to 1653
2021	1682	1649	33	4
2022	1682	1736	-54	-83

20. Table 2 shows that across Ipswich it is anticipated that there will be a reducing number of surplus places with a deficit in 2020 and again in 2022 if the school's PAN remains at 143 and in 2022 if the PAN reverts to 172. Local authorities are expected to have some surplus places so that there are sufficient places for those moving into an area and should growth rates actually outstrip forecasts and so the small amount of surplus places for 2021 would also create the risk of insufficient places.

21. The statutory framework and capital funding policies are important in this context. Section 14 of the Education Act 1997 imposes a statutory duty on the local authority to secure the provision of school places. Where a local authority identifies a need for additional school places in order to meet this duty, it can make a case to the DfE for capital funding for what is called 'basic need' for school places. Capital funding allocations are made to local authorities to meet the cost of providing such new school pupil places whether by expanding existing maintained schools, free schools or academies, or by establishing new schools.

22. In recent years, the numbers of children in primary schools have risen across large parts of the country. These children are now reaching secondary school age and additional secondary school places need to be created in some areas. New buildings, and the capital funding to pay for them, are needed in many cases.

23. Capital funding for new places is provided where the existing capacity of publicly funded schools is below the level of projected need for places. Capacity in this context is not calculated by multiplying the PAN for each school by the number of year groups. Instead it is calculated by reference to the relevant School Capacity Survey (SCAP). If the school reduces its PAN and admits 143 children a year for five years this would lead to the school having 715 students if full in each year group. This, however, is not the capacity of the school for the purposes of a SCAP. That capacity is stated as 860 in the school's funding agreement and as recorded on the DfE website Get Information About Schools. That is the capacity which the DfE would use in assessing any case the local authority made to secure additional funding for capital to provide new places. A PAN of 143

would lead to a total reduction of 145 school places over five years as there would be 29 fewer places in each year group. The DfE will not provide capital funding to replace school places removed consequent on a reduction of PAN where the SCAP remains the same. In addition, whatever the source of the funding, the removal of places which are needed will lead to the expenditure of public money to restore those places and allow the local authority to meet its statutory duty to secure provision. Actions which could lead to significant unnecessary public expenditure or make it harder for a local authority to fulfil an important statutory duty must be carefully scrutinised.

24. I will now consider the reasons the school has given for setting its PAN at 143. In the consultation letter preceding the determination of the arrangements the school gave its reasons for reducing the PAN to 140 as:

- *“Lowering the PAN to 140 will ensure there are still ample places for all first choice applications according to Suffolk’s LA figures, in conjunction with our own recent historical data.*
- *The reduced PAN will enable us to plan staffing needs accurately, ensuring that we can give a better teaching provision for those students on role [sic].*
- *The reduction is in line with other secondary schools in the local area which have recently reduced their PAN.”*

25. The response to the objection repeated these points and pointed out in addition:

- a. the local authority’s forecast has been inaccurate previously;
- b. the school has organised itself on the basis of five forms per year group; and
- c. a high number of children which join the school in-year because there are surplus places.

26. I have already considered the school’s concerns with regard to the local authority’s forecasts above. Forecasts are just that and can be affected by many things but I have been reassured as to the robustness of the local authority’s approach and my view is that is reasonable for me to rely on the forecasts.

27. The school said, as above, *“Lowering the PAN to 140 will ensure there are still ample places for all first choice applications.”* I was not sure what the school meant by first choice applications. Schools know how many applications are made for places and by whom but they do not know whether any given application was a first, second, third or lower preference. The school explained that as it has admitted below its PAN and thus accepted all applications, it could be confident that all those who had made the school their first preference in their application had been admitted. This is true for the years in which the school has been undersubscribed but the future may well be different. The forecasts do not support the view that there will be *“ample places”* in the future in

the area served by the school were the PAN to be reduced.

28. I have considered that, as on 7 September 2018, 147 children had been admitted to Y7. This is four children above the PAN of 143 set for 2019, 25 below the previous PAN of 172 and eight lower than the local authority's forecast of 155. I do not think that this variance from the forecast undermines the local authority's case to any significant extent. I note that the number admitted will make Y7 the largest year group in the school.
29. The second point the school made in its consultation letter was that it would be easier to plan staffing needs with a lower PAN. If the school had a PAN of 143 then it would plan around five forms of entry; it has said that it is organised on this basis in every other year group, with about 28 students in each class. It would not have to change its class structure because it would be possible for the school to refuse to admit children if they wished to join Y7 during the course of the academic year 2019/20 if the admission of the child would take the school over its PAN of 143. A school has to admit children in a normal year of entry (Y7 in this case) if the numbers at the school in that year group are below the PAN. The only grounds for refusing admission are prejudice to the provision of efficient education or the efficient use of resources and the law does not allow an argument on the grounds of such prejudice to be made when there are fewer children than the PAN in the normal year of entry. It is, of course, not the whole story to say that the admission of a child can be refused in a normal year of entry simply because the school is at or above its PAN. The school would still need to establish prejudice in order to refuse to admit a child and the normal right of appeal would exist. That said, it is the case that a school which is "full" in a normal year of entry could have grounds to refuse admission (subject to the right of appeal).
30. It is understandable that schools wish to have certainty about their numbers as this doubtless supports the efficient and economic planning of staffing and the curriculum. For example, the 147 children admitted to the school in 2018 could be arranged into five classes of 29 or 30 or six groups of 24 or 25. Six groups will be more expensive as more staff would be required but would give capacity for the in-year admissions which may occur in Y7. Five groups of around 30 would mean that if more children join the school during Y7 the school would need either to re-arrange the classes part way through the year so that there are more teaching groups or to have larger classes. Whatever the school's class structure, it would have to admit children to Y7 in-year if it had fewer children in that year group than its PAN.
31. In addition, the school says that children joining in-year create more work. The school said that 97 children joined the school after the beginning of the school year and during the 2016/17 academic year and that 35 per cent of these children were disadvantaged, 37 per cent have English as an additional language and 23 per cent have an identified special educational need. The school said that the strain on

its resources created by the high levels of need and the challenges of inducting so many students mid-year affects the quality of education. It also said that this was recognised by Ofsted in its report in March 2018 as Ofsted said, *“The welfare support for some pupils is not effective in helping them to settle quickly and to learn well. This includes some pupils who join the school midway through the year.”* I do not think that Ofsted has said here that in-year admissions caused problems for the school but I recognise that high numbers of in-year admissions can create significant challenges for any school. It is the case that Ofsted recognised that relatively high numbers of children join the school other than at the normal point of entry at the beginning of Y7.

32. Generally, it is true that children joining a school in-year does create additional work for the school with a demand on resources and staff time. This will be further affected if those children have additional needs of any kind. However, it may be that the school believes that a lower PAN means it can set up its class structures without the concern of many children joining in-year in all years, including at the beginning of Years 8 – 11, and I need to explore this point in more detail.
33. First of all, it is inevitable that children will need places other than at normal points of admission (the beginning of Y7 in the case of this school). Children change school at the beginning of school years other than normal points of entry, for example at the beginning of Year 8 or later years and during academic years. There are many reasons for such changes. They will include house moves, the availability of a place at a preferred school or dissatisfaction with a previous school. Some of the children involved will have additional needs; others will not.
34. Paragraph 2.21 provides that *“Any parent can apply for a place for their child at any time outside the normal admission round”*. This is based on the provision in Section 86 of the Act. Section 86 makes clear that the only grounds on which admission to a school can be refused (barring certain provisions relating to very limited circumstances) is that this would *“prejudice the provision of efficient education or the efficient use of resources”*. As noted above, in a year in which children are normally admitted to a school (Y7 in this case) such prejudice cannot arise if the number of pupils in the relevant year group is lower than the PAN. In other years, Years 8, 9, 10 and 11 for this secondary school, the grounds for refusing a place are the same but there is no specific provision relating to the PAN as the PAN applies only to normal years of entry. It is not the case that reducing the PAN to 143 for Y7 in 2019 means that a school can refuse admission to another year group simply because to admit a child would take the number in that year group over 143. Whether prejudice would arise would need to be decided in the light of the circumstances of each application for a place by the admission authority and, if the right to appeal was exercised, by the independent appeals panel.
35. To put this another way, if an admission authority raised its PAN for Y7

for 2019, it could not be required to admit to that number in any other year group. The PAN for Y7 in any year is only relevant to the year group admitted under that PAN. In summary this means for this school that the setting of the PAN for 2019 at 143 does not have the effect of limiting the scope for a child to gain admission to other year groups in the school.

36. The third reason given in the consultation letter for reducing the PAN is that other schools have done this. I asked the school what was meant by this and it told me that its neighbouring school, Chantry Academy, had done so. I therefore asked the local authority to comment on this given its concerns over the number of places. The local authority explained that, *“The PAN for Chantry Academy has been mainly out of the Local Authority’s control as this school was part of the priority build programme and the Education Funding Agency, now Education and Skills Funding Agency decided on the size of this school. They originally proposed a PAN for the new build of 165, this would have reduced the PAN from 270, however, after discussions between the Local Authority and the Education Funding Agency, it was agreed to build the school to a PAN of 180. The new buildings opened in September 2015.”* The planning for this new build and lower PAN must have taken place around some years before the new buildings opened which was itself three years ago. I recognise the case for the need for places in 2019 and beyond would not have been easy to establish; it is only now that the pressure for places is clearer. In this context I do not accept the actions of several years ago justifies reducing the PAN at the school for 2019.
37. In September 2018 147 were admitted to Y7 at the school. This is more than the PAN of 143 set for 2019 and last year’s entry of 131 or any previous year in the last five years (the highest figure in a year group is 133 currently) so this could be evidence that demand is increasing. I had asked the school to comment on the forecast for 2018 (which was 155). The school did not respond directly to my question but said that it would be writing to the local authority *“confirming that we will exceed our PAN of 140 [sic].”* I assume that this refers to the PAN of 143 set for 2019 and indicates that the school would be willing to admit more children than 143 to Y7 in 2019. However, a PAN is legally binding in this matter and an expression of intent is not. A local authority cannot rely on promises and good intentions when it comes to fulfilling its duty to secure sufficient school places.
38. The school reiterated its concern that the *“main motivation for reducing the PAN was the abnormally high number of in-year entries the Academy receives each year and the high level of educational need that these young people invariably bring with them.”* My remit is for admissions to Y7 and I have been convinced by the evidence provided to me that places above the PAN of 143 determined by the trust will be required.

39. On the basis of the evidence given to me, I am confident that more than 143 places will be needed at the school for Y7 in the foreseeable future and I uphold the objection to the setting of the PAN at 143.

## **Summary of Findings**

40. The school set its PAN at 143 which is a reduction of 29 places from 2018 and previous years when the PAN was 172. The primary reason for doing this was the number of in-year admissions to the school because it has had surplus places over several years. The school has capacity for a PAN of 172.

41. The evidence presented to me shows that if the PAN for the school were to remain at 143 then by 2020 there would be insufficient school places in Ipswich for the children requiring them. I therefore uphold the objection to the reduction in the PAN from 172 to 143.

42. There are other matters as described above which do not comply with the Code which mainly relate to missing information and a lack of clarity. The Code requires the school to revise its arrangements to address these matters.

## **Determination**

43. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2019 determined by Ormiston Academies Trust for Stoke High School – Ormiston Academy in the local authority area of Suffolk.

44. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

45. 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: 20 September 2018

Signed:

Schools Adjudicator: Deborah Pritchard