



Office of  
the Schools  
Adjudicator

## Determination

**Case reference: ADA3656**

**Objector: The Local Authority (Medway Council)**

**Admission authority: The governing board of The Thomas Aveling School on behalf of the Fort Pitt Thomas Aveling Academy Trust, Rochester.**

**Date of decision: 3 August 2020**

## 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 2021 determined by the governing board of The Thomas Aveling School on behalf of the Fort Pitt Thomas Aveling Academy Trust for The Thomas Aveling School, Medway.**

**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 a representative of the local authority, (the objector), about the admission arrangements (the arrangements) for The Thomas Aveling School (the school), an 11-18 academy school for September 2021. The objection is to the priority given in the oversubscription criteria to children attending one of the two primary schools in the academy trust.

2. The local authority for the area in which the school is located is Medway Council which is also the objector. Other parties to the objection are the school and the academy trust.

## Jurisdiction

3. The terms of the Academy agreement between the multi-academy trust 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 board, which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 23 March 2020. 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

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

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

- a. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 23 March 2020, supporting documents and subsequent communications;
- d. the school's response to the objection, supporting documents and subsequent communications;
- e. the local authority's composite prospectus for admissions to secondary schools;
- f. maps of the area identifying relevant schools and access (catchment) area; and
- g. confirmation of when consultation on the arrangements last took place and details of the nature of the consultation and responses to it.

## The Objection

6. Medway Council has objected to the inclusion of the following in the admission arrangements under criterion d) *"Any student who has attended an FPTA Academies Trust junior and/or primary school continuously from the start of Year 5"*

7. The local authority says that this criterion does not comply with paragraphs 14 and 1.8 of the Code as it would be unfair to pupils in the vicinity of the school who live closer to

it than those who attended another school in the trust. Medway council does not see this as a fair way of determining who can be offered a place at secondary school.

8. Paragraph 14 states that *“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”*.

Paragraph 1.8 states that *“Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair and comply with all relevant legislation including equalities legislation”*.

9. The objector cites both these paragraphs in the Code on the grounds that the oversubscription criterion is not fair or reasonable.

## Other Matters

10. The following matters may not conform with the requirements of the Code or the law;

- The definition of looked after and previously looked after children (paragraph 1.7 of the Code)
- The reference to the Published Admission Number (PAN) for year groups other than year 7 and year 12 (paragraph 1.2 of the Code)
- The PAN for admission into year 12 (paragraph 1.2 of the Code)
- The definition and timeframe of waiting lists (paragraph 2.14 of the Code)

## Background

11. The school is an 11 to 18 academy school in Rochester. At a governing board meeting in November 2019, it was decided to conduct a consultation process proposing that the admission arrangements for admissions in 2021 included a criterion which gave priority to children attending one of the two primary schools in the academy trust. The consultation period ran from 4 December 2019 to the 28 January 2020. 29 emails/letters were received in favour of the addition of the criteria and 47 emails/letters were received which were against the addition of the criterion.

12. At a governing board meeting on the 27 January 2020 the responses were discussed and it was unanimously agreed to determine the arrangements to include the new criterion. One of the negative responses was from the local authority, the objector in this case. The local authority gave three reasons why they opposed the addition;

- 1) *This would be detrimental to families living closer to The Thomas Aveling School whose nearest school is The Thomas Aveling School but whose children do not attend a FPTA academies trust primary/junior school. It is possible that pupils in this position may not be offered a place at their nearest non-grammar secondary school due to places instead being offered to pupils living closer to other non-grammar secondary schools.*

- 2) *The proposed change is likely to impact a number of prospective applicants in the Rochester East, Rochester South and Rochester West areas who attend schools other than FPTA academies trust academies, whose nearest non-grammar school is The Thomas Aveling School.*
- 3) *The FPTA Academies Trust ethos can be instilled in those who did not attend an FPTA Academies Trust primary/junior school but transition to Year 7 at The Thomas Aveling School.*

13. The planned admission number for the school is 190 but the school has agreed to take an additional 30 pupils in September 2020 in a 'one-off bumper class'. This was agreed in support of the local authority as a planned new school in Rainham had not been finished in time to take the 2020 Year 7 cohort. The school is oversubscribed; in 2018 43 first preference applications were unsuccessful, in 2019 the number was 50 and in 2020, even with the additional 30 admissions the number was 24.

14. The oversubscription criteria can be summarised as follows;

- Looked after and previously looked after children
- Siblings
- Living in the access area
- Students attending an FPTA academies Trust Junior and/Primary school continuously from the start of year 5
- Distance from home.

15. The access area is a small defined catchment area some distance from the school and there is a map on the school website which shows the area.

## Consideration of Case

16. In response to the objection the school set out its justification for the inclusion of the criterion. The school said that almost all other Multi Academy Trusts in Medway have added pupils attending their primary schools to their oversubscription criteria and the school was concerned that the number of schools in which the academy trust pupils could expect to gain a place has diminished. They say that there is a particular ethos in the trust and there is a greater chance of continuing this if the students stay in the trust. They go on to say that as one of the two primary schools is near to the school, the numbers increased by this criterion would be small as the children are already successful in gaining a place. The other primary school is some distance from the school and would mean a significantly longer journey time than to other local schools and therefore the numbers from this school are unlikely to rise. They conclude by saying that most of the parents who raised concerns during the consultation would be successful in gaining a place at the school under the new arrangements.

17. I have looked carefully at numbers of children applying for and being admitted to the school in terms of their primary school. Children from 43 different primary schools have been successful in gaining a place at the school in the last three years. Of these schools only five schools have sent an average of ten pupils are more to the school each year. These are Balfour Junior School, (0.74 miles) Delce Academy, (0.58 miles) St William of Perth Catholic Primary, (0.88 miles) The Pilgrim School (1.8 miles) and Warren Wood Primary Academy(0.16 miles). Distance in brackets is distance from the school to the primary school.

18. The size and position of the access area is pertinent to this case. The access area is relatively small and under the access area criteria only 15,16 and 9 pupils have been admitted in 2018, 2019 and 2020 respectively although the number of children living in this area and admitted to the school may be slightly higher if some of the sibling admissions also live in the access area.

19. Its size and location some way from the school mean that it is far from a typical catchment area in which it might be expected that most children attending a particular school would live. The LA's website explains that the purpose of the access area is to ensure that children who live in this area have priority for a place at their local school. While a catchment system is not in general use across the area, the access area is surrounded by the River Medway, the M2 motorway and major train tracks. It is easy to see that if children living there could not attend the school they might well face an unacceptably long and difficult journey to an alternative non-selective school.

20. The Pilgrim School is within the priority access area. The other four schools who have sent on average ten or more pupils to the school in the last three years do not fall within the access area and Balfour School (one of the two trust primary schools) is the third furthest from the school of these four.

21. Had the access area been a larger catchment area forming part of a wider catchment system in an area, then it would be much more likely to be compliant within the Code for the school to identify the trust primaries in their criterion for out of catchment area admissions. That is because in an area wide catchment system which ensures that all children have a high priority for one school or another, how priority is given after catchment need is met is less likely to disadvantage unfairly any group of pupils. Of course, the schools would have to be named in order to comply with the Code requirement that all feeders must be named. In addition, the caveat in these arrangements that pupils would have to have attended the primary school since the start of Year 5 could still also be unfair to those pupils who have moved into the area and joined the school recently and therefore also non-compliant. However, as I explain above the access area is small and not part of an area wide catchment system. I need therefore need to consider whether giving priority to children on the basis of attending these two schools does disadvantage unfairly other children who live closer to the school.

22. Paragraph 1.15 of the Code states that *“Admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school or schools as*

*an oversubscription criterion **must** be transparent and made on reasonable grounds”.*

Whilst it may be reasonable grounds for the trust to include trust primary schools as named feeder schools in the admission arrangements of the trust’s secondary schools, the implications for other applicants needs to be considered in order for the arrangements to be fair. It is not sufficient for a named primary feeder school to simply be part of the same multi-academy group of schools in order to be fair. I should record here that the school’s arrangements do not conform with the Code as the feeders are not named. Naming the two schools as feeders, is not, however of itself enough to satisfy the requirements of the Code that feeders be selected on reasonable grounds and, as set out above, that arrangements are fair and that oversubscription criteria are reasonable.

23. The school states that there is a particular ethos in the trust and that students would benefit from maintaining that ethos through primary and secondary but there is no explanation of how that ethos manifests itself or what links there are between the schools which makes the relationship special thereby warranting a place in the admission arrangements as a named feeder school. Only one student has moved from The Phoenix School (the other trust school) to the school in the last three years and it is therefore difficult to see how there are close transitional or curricular links between the schools.

24. The school is oversubscribed. The furthest distance to the last place offered in the last three years on the basis of distance has been 1.3 miles in 2018, 1.3 miles in 2019 and 1.47 miles in 2020. Four of the five schools which have each sent more than ten pupils to the school each year in recent years are all well within this distance, all being less than a mile distant from the school. The remaining school (Pilgrim) is 1.8 miles distant but is located in the access area. One of the two trust primaries (Balfour) is close enough to the school, that its pupils (assuming they live close to the primary school) would gain places by means of proximity. The second trust primary (Phoenix) is 1.1 miles from the school. The criterion would allow pupils from the Phoenix School to have priority over those pupils attending schools which are nearer to the school and whose pupils are accordingly likely to live nearer the school. Although the school says that this is unlikely to happen it is providing for this outcome. This would mean that children local to the school would lose priority and could therefore have to be allocated to a school much further away.

25. The local authority provided me with a map to show which area would give them most cause for concern; to the southeast of the access area is an area of housing known as the Borstal area. The school is situated in this area which is bordered by the access area, major trunk roads and the M2 motorway. Under the new arrangements children living in this area could be ‘displaced’ by children from the Phoenix School. If this were the case then the nearest secondary schools for them to attend would be Victory Academy, Waldersdale Girls’ School and Greenacre School (boys). In common with other secondary schools in the area, these schools were undersubscribed on the official offer date but both Victory Academy and Greenacre Academy has admitted pupils to above PAN in the last year. It is possible therefore that each of these three schools might be able to accommodate pupils from the Borstal area but the question remains; is it fair that they should have to travel to these schools? In order to access these schools from the Borstal area the students would have to travel past the school and their journeys would be longer and lengthier. If this were

to happen then students who have attended the trust primary schools would be travelling in the opposite direction to access the school. I consider this unfair to those children who would be at a disadvantage because they would have to travel further to their allocated school.

26. The inclusion of the feeder schools does not conform with the Code because they are not named as required by paragraphs 1.9b and 1.15 of the Code. The inclusion of the Phoenix School is contrary to paragraph 14 and 1.8 of the Code as it is not reasonable in its effects and would, I consider, cause unfairness to some children. I therefore uphold the objection.

## Other Matters

27. The following matters do not conform with the requirements of the Code or the law;

- The definition of looked after and previously looked after children (Paragraph 1.7 of the Code). The Code does not identify this group as Children in Care but as looked after and previously looked after children and this requires amendment in the arrangements. In addition, although the school and local authority work closely together on admissions, as the school is its own admission authority the definitions of looked after and previously looked after children should appear in the determined admission arrangements which are published on the school's website. This also requires amendment.
- The reference to the Published Admission Number (PAN) for year groups other than year 7 and year 12 (paragraph 1.2 of the Code). The PAN is defined in the code as the admission number set for each relevant year group. Therefore, the PANs for this school should be for year 7 and 12 only. Other year groups do not have a PAN. The arrangements require an amendment to clarify this.
- The PAN for admission into year 12 (paragraph 1.2 of the Code). I drew the attention of the school to the statement of PAN for year 12 which included those students who had moved from the school's year 11. The PAN for year 12 is the number of external students who will be admitted at year 12. The school has acknowledged this and has said that the arrangements will be amended to cover this.
- The definition and timeframe of waiting lists (paragraph 2.14 of the Code). This section is unclear as it states that no waiting lists are held for year 7 to 13 and then explains a waiting list is held by the local authority for year 7 pupils until 31 December. I consider this unclear and unhelpful for parents and not compliant with paragraph 14 of the Code. This requires amendment.

## Summary of Findings

28. I have considered all aspects of this case and conclude that the addition of a priority in the arrangements to pupils attending two trust schools is unfair to those children who live near to the school and I therefore uphold the objection.

29. In addition, I have identified a number of issues within the arrangements which do not conform to the Code and these require amendment.

30. Paragraph 3.6 of the Code allows amendments to arrangements to be made in line with a determination from the adjudicator without recourse to further consultation and therefore these changes need to be made as soon as possible.

## Determination

31. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2021 determined by the governing board of The Thomas Aveling School on behalf of the Fort Pitt Thomas Aveling Academy Trust for The Thomas Aveling School, Medway.

32. 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.

33. 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:

Signed:

Schools Adjudicator: Ann Talboys