



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3657

Objector: The Local Authority (Medway Council)

Admission authority: The governing board of The Robert Napier 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 Robert Napier School on behalf of the Fort Pitt Thomas Aveling Academy Trust for The Robert Napier 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 Robert Napier 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
- g. confirmation of when consultation on the arrangements last took place and details of the nature of the consultation.

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).

Background

11. The school is an 11 to 18 academy school in Gillingham. At a governing board meeting on 2 December 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 3 December 2019 to the 27 January 2020. No responses to the consultation were received although the school realised on 6 February 2020 that the consultation document had not been sent to the local authority. Subsequently the local authority wrote to the school expressing concerns.

12. The local authority’s response was considered through correspondence by the governing board. The governing board determined the arrangements on 11 March 2020 and included the challenged criterion. The local authority gave two reasons why they opposed the addition:

- 1) *It is possible that children whose nearest non-grammar secondary school is The Robert Napier School might not be offered a place there due to children in the locality of Balfour Junior Academy/Phoenix Junior Academy being offered places instead.*

2) *The above would mean that children whose nearest non-grammar secondary school is The Robert Napier School may have to travel to their next nearest school due to missing out on places to those who live further away.*

13. The planned admission number for the school is 180. The school has not been oversubscribed on secondary school offer day over the last three years and therefore all first preference applications have been successful. First preference numbers for the last three years are 111 in 2018, 79 in 2019 and 109 in 2020. However, the school has been full in each year at the time of admission in September with 205 students on roll in Year 7 in September 2018, 181 in 2019 and 205 in 2020.

14. The oversubscription criteria can be summarised as follows:

- Children in Care
- Siblings
- Students attending an FPTA academies Trust Junior and/Primary school continuously from the start of year 5
- Distance from home.

Consideration of Case

15. In response to the objection the school provided timeframes for the inclusion of the new criterion; governing board minutes record that they unanimously agreed the new criterion but give no explanation for the inclusion of the criterion. Nor do the admission arrangements themselves explain the inclusion of the criterion. The only comment made by the school in its response to me when I asked why the trust primary schools had been included was *“the preference and allocation of a place to students from Balfour or Phoenix over the last three years has been minimal”*.

16. I have looked carefully at numbers of children being admitted to the school in terms of their primary school. Children from over 40 different primary schools have been allocated a place at the school in the last three years. Of these schools nine schools have sent an average of ten pupils or more to the school each year. Of these schools the nearest is 0.4 miles from the school and the furthest is 1.01 miles from the school. The trust primary schools are 1.55 miles and 2.11 miles away from the school (Phoenix and Balfour respectively).

17. One child from Balfour joined the school in 2018, none was admitted in 2019 and one was admitted in 2020. One child was admitted from Phoenix in 2018, two in 2019 and none in 2020.

18. Even though the school is not oversubscribed, it has admitted over PAN in each of the past three years. It will have done so because there will have been children who either applied late for a place or who could not allocate a place at a preferred school. The local

authority in its response suggests that oversubscription is a genuine possibility in the near future.

19. 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”*. As the objection points out, all oversubscription criteria must also be reasonable and all admission arrangements must be fair. I have tested the inclusion of the feeder schools against each of these requirements.

20. I have been unable to establish the school’s reasons for including the feeder schools in its arrangements. The admission arrangements make no mention of the schools working together and neither the governing board minutes nor the response to the objection from the school mention why the criterion has been included. I have looked at the school’s website and this statement is in the Headteacher’s introduction; *“Working with our sponsor, FPTA , my aim is to ensure students have access to the best possible opportunities and experiences during their education, so that they can reach their full potential and are better prepared for the future. I very much share The Trust’s ethos around developing students as individuals and not just learners. We believe that every child matters and deserves a happy first class education. Everyone has hidden potential to be uncovered and nurtured and I strongly believe that together as a learning community we can unlock this potential.”* Only five students have moved from the trust primary schools 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. It may be that the school wishes to give priority to these school because they are members of the same trust. If this is the case, this could amount to reasonable grounds for including the schools as feeders, but I cannot know this as the school has not taken the opportunity to tell me so or to give me any other reasons.

21. In any case, 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 need to be considered in order to reach a judgement as to whether the arrangements are 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.

22. The school has also had the opportunity to explain to me in response to the objection why it thinks it fair to give priority to pupils from Balfour and Phoenix schools. It has not done so.

23. In these circumstances, I have looked at the effect of the school’s arrangements. The criterion would allow pupils from the Balfour and Phoenix Schools 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. I note in this context that the local authority has emphasised that the school is likely to become oversubscribed in the near future and drawn my attention to the increasing numbers of children seeking places in secondary schools in the area. If children living closer to the school than those who attend Balfour and Phoenix are likely to do are unable to gain places at the school, they would have to attend a different school. Such a school might be much further away and/or might involve a more difficult journey to reach and I now turn to consider this.

24. Looking at the location of the schools in the area it is clear that the two trust primary schools are significantly further away from the school than the primary schools which currently send pupils to the school. The majority of pupils allocated to the school come from primary schools to the north and the east of the school. The two trust schools are further away and to the west of the school. Any increase in numbers of pupils being admitted from the primary trust schools would inevitably displace students allocated to the school who would be living nearer to the school. The other secondary school in the area is Brompton School which is heavily oversubscribed. This school's admission arrangements use a banding system to ensure a mixed ability intake to the school and therefore there are no data concerning distance from the home to the school of unsuccessful applicants. The next furthest secondary school is The Victory Academy which is situated much nearer to the trust primary school also to the west of the area. The Victory Academy is also on the other side of the main A2 road from the school and the nearby primaries.

25. I consider this situation unfair to those children who would be at a disadvantage because most displaced pupils would have to travel further to their allocated school and in some cases they would have to pass The Robert Napier School in order to get to either Brompton or Victory academies. On the basis of the information provided to me, I consider that this is a real possibility for 2021. I therefore do not consider it reasonable or fair for the school to identify the trust primary schools in their admission arrangements as this is contrary to paragraph 14 and 1.8 of the Code. I therefore uphold the objection.

Other Matters

26. The following matters do not conform with the requirements of the Code or the law;
- The arrangements give priority to what are described as "Children in Care". The relevant Code requirement at paragraph 1.7 is to give priority to looked after and previously looked after children. This is a significantly wider group than Children in Care and the arrangements require amendment accordingly. 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 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 admission arrangements include the phrase *“and thereafter will be 180”*. Determined admission arrangements are for one year only and 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.

Summary of Findings

27. 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.

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

29. 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

30. 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 Robert Napier School on behalf of the Fort Pitt Thomas Aveling Academy Trust for The Robert Napier School, Medway.

31. 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.

32. 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: 3 August 2020

Signed:

Schools Adjudicator: Ann Talboys