



Office of
the Schools
Adjudicator

Determination

Case reference: REF3748

Objector: Wigan Metropolitan Borough Council

Admission authority: The Shaw Education Trust for The Westleigh School,
Wigan

Date of decision: 10 November 2020

Determination

I have considered the admission arrangements for September 2021 determined by the Shaw Education Trust for The Westleigh School, Wigan in accordance with section 88I (5) of the School Standards and Framework Act 1998 and find that in relation to the determined PAN, the arrangements do not conform with the requirements relating to admissions. I have also found that there is a further matter which does 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 was referred to the adjudicator by Wigan Metropolitan Borough Council, (the objector), about the admission arrangements (the arrangements) for The Westleigh School (the school), a non-selective mixed academy school for children aged 11 to 16 for September 2021. The date of the objection was 14 May 2020 which was before the required date of 15 May 2020 and the objection was to the determined published admission number (PAN) of 180, which was a reduction from that for September 2020 of 210. However, the arrangements were not determined by the admission authority until 29 July 2020, in identical form to those which the objector had objected to. This means that the objection must be treated as having been made on that date, and so after the deadline for

objections with the result that it cannot be treated as an objection. However, as the arrangements have been brought to the attention of the Office of the Schools Adjudicator (OSA), I have decided to use the power conferred under section 88I (5) of the Act to consider whether the arrangements conform with the requirements relating to admission arrangements. I am therefore treating the objection as a referral. The referral relates to the PAN which the admission authority has set for admissions in September 2021.

2. The objector is the local authority (LA) for the area in which the school is located.

Jurisdiction

3. 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 academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the academy trust, which is the admission authority for the school, on that basis.

4. I have also used my power under section 88I of the Act to consider the PAN set for admission to Year 7 at the school in 2021 and the arrangements as a whole. I am satisfied that I have jurisdiction to consider these matters.

Procedure

5. In considering these matters I have had regard to all relevant legislation and the Code.

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

- a. a copy of the minutes of the meeting of the Academy Council at which the arrangements were determined, in July 2020;
- b. a copy of the determined arrangements;
- c. the form of objection dated 14 May 2020 and supporting documents together with subsequent correspondence submitted by the LA;
- d. the school's response to the initial form of objection and supporting documents together with subsequent correspondence;
- e. the local authority's online composite prospectus for admissions to secondary schools;
- f. a map of the area identifying relevant schools;
- g. confirmation of when consultation on the arrangements last took place;
- h. the school's Supplemental Funding Agreement with the Secretary of State of March 2018 and the capacity assessment therein;
- i. information concerning

- j. the recent history of expressed preferences for a place at the school in Year 7 and of the number of children admitted,
- k. the LA's forecast of the future demand for such places
- l. the most recent net capacity assessment for the school.

The Referral and Other Matter

7. The LA was prompted to make its objection to the PAN of 180 which has been determined for the school for September 2021 by its concern that that this reduction from the previous PAN of 210 would compromise its ability to provide sufficient school places locally from September 2021 onwards.

8. When I considered the arrangements as a whole it appeared to me that the following matter also did not, or may not, conform with requirements:

- that the arrangements contain no explanation of the references to "Atherton" and "Leigh" as areas in which those living are afforded priority for admission, which appears to make the arrangements unclear (in contravention of paragraph 14 of the Code) since they contain an unclear oversubscription criterion (in contravention of paragraph 1.8 of the Code), and catchment areas which are not clearly defined (in contravention of paragraph 1.14 of the Code).

I have sought the school's comments on the PAN reduction and on this further matter of concern.

Background

9. The school conducted a consultation, ending on 17 January 2020, concerning its proposed admission arrangements for September 2021 which included a PAN of 180. The LA objected to this proposal on the grounds that the 30 places which this would remove were needed in order to satisfy the local demand for school places. It has informed me that a considerable capital investment had been made in the school's buildings in 2014, when the school was a community school, in order to increase its capacity to allow 210 admissions from 2016 onwards and in order to enable the LA to meet its statutory duty to provide sufficient school places. The PAN has remained 210 since that time.

10. The school decided to determine a PAN of 180 for September 2021. I shall come to its reasons for doing so below. Both the LA, in making the objection, and the school at my request, had furnished me with what were stated to be the school's admission arrangements for 2021, which include a PAN of 180. However, the minutes of the meeting of the school's Education and Standards Committee on 29 January 2020, which were provided to me by the school in response to my request for evidence that they had been determined by the admission authority, stated that there had been "no change". I therefore explained to the school that, in view of the nature of the objection which had been made, I was unable to consider this minute as evidence of the determination of the arrangements including a reduction in the PAN.

11. The school wrote to me saying that as a result of the objection by the LA it had submitted a business case to the Regional Schools Commissioner at the Department for Education in February 2020 concerning its admission arrangements, and that although “this had not been approved” the school had nevertheless “incorrectly” published on its website arrangements for September 2021 which included the reduced PAN.

12. I wrote again to the school saying that in view of these comments I had concluded that the determination of the arrangements had not taken place and that I therefore had no jurisdiction to consider the objection which had been made concerning them. I also explained to the school the relevant provisions in the Code and elsewhere concerning the determination of admission arrangements, and asked that I be provided with evidence of the determination of its arrangements as soon as this had taken place.

13. The school wrote to me again on 7 August 2020, helpfully setting out the process which it believed it had needed to follow to determine arrangements with a reduced PAN, including the unnecessary reference to the Regional Schools Commissioner which had taken place, as referred to above. The school had mistakenly believed that “the decision to reduce the PAN was subject to approval from the Regional Schools Commissioner”. This letter said that the minutes provided to me of the meeting which had taken place in January 2020 had been an inadequate record, and that the Academy Council had met on 29 July 2020 to formally confirm the determination of arrangements which included a PAN of 180. A minute of that meeting, and a copy of the arrangements, were also provided to me by the school.

14. I therefore wrote to the school and the LA saying that, although the original case had been closed, I was of the view that it was appropriate for me now to consider the arrangements including the reduced PAN not least since the LA had believed these to have been determined at the time when it submitted its form of objection. Because the arrangements were in fact determined on a date after the date of the objection, and after the deadline for objections, I am considering the objection as a referral to me.

15. I have asked the school for its comments on this matter and for it and the LA to provide me with information, as set out above, relevant to my consideration. I have also asked the school to comment on my concerns, as expressed above, regarding the following oversubscription criteria which are contained in the determined arrangements which were provided to me by the school on 7 August 2020:

“.....

3. Children living in WN7 5 and Atherton

4. Children living in Leigh.

.....”

Consideration of Case

The PAN of 180

16. When I asked the school to comment on the PAN reduction, it wrote to me setting out in detail its reasons for wishing to reduce the number of Year 7 admissions from 210 to 180. It said that when the LA had expanded the school in 2015 (which was before it became an academy), and had increased the PAN from 156 to 210 in September 2016, it had not increased the capacity of the canteen, changing rooms or toilets. The school said that it “is not equipped to safely accommodate year groups of 210”.

17. I therefore asked either the school or the LA to provide me with the available net capacity assessment for the school, and this was sent to me by the latter and included an assessment based on Building Bulletin 98 of the school’s capacity both before additional accommodation was provided in 2015, and after this had happened. The current calculation shows the range of available workplaces as 1047 to 942, resulting in an indicated admission number of 209. The PAN of 210 assumes an available capacity of 1050. Prior to the additional building, the indicated admission number and the PAN were both 156. The LA also provided me with the consultation document, report to Cabinet and accommodation calculations that were used in 2014, which set out the intention to provide the school with accommodation that would support a PAN of 210.

18. The school has commented on all this documentation, pointing out that no mention was made at the time the building work was planned of increased facilities for PE changing, toilets and the canteen, and has given me a detailed analysis of why each is inadequate at the present time. It has refuted statements made by the LA concerning understandings that the latter says were in place when the new accommodation was provided that dining arrangements in particular would be revised so that the available capital could be used to maximise the new teaching accommodation. The LA did not make any comment about the school’s assessment of the shortfall in capacity concerning the other facilities referred to above, and has not commented on the school’s view about conversations between the two parties in the past.

19. It seems to me that I am left with a picture concerning the school’s accommodation that there are undoubted capacity difficulties with respect to important facilities for pupils, but that nevertheless the overall capacity calculation does support a PAN of 210. There is also clearly a disagreement between the parties concerning conversations which may have taken place in previous years about the present and future use of the school’s accommodation.

20. In turn now to the need for places at the school, both in the recent past and as projected. The local authority has provided me with its projected need for Year 7 places across the area which it serves, broken down to show data for the eight planning areas which it uses. It has explained to me why the figures for the planning area which includes the school (planning area 7) and the adjacent planning area 8 are particularly relevant when considering the need for places at the school. These two planning areas constitute what the

LA calls “the east of the borough”, which appears on the map which has provided for me as a relatively self-contained geographical area. The LA’s view is that any children from the area not accommodated in schools there “would have to bypass The Westleigh school and travel to Lowton CE High which we would consider to be too far”. The LA has not provided me with the distance between the two schools but I estimate it to be 3.5 miles, based on the measuring tool in Google maps.

21. The projected need for Year 7 places shown below gives figures which are either a surplus (a positive number) or deficiency (negative number) against the sum of the PANs of the schools concerned, with the figure used for the school being 180:

Area	2021	2022	2023	2024
Area 7	27	-1	37	39
Area 8	-92	-102	-121	-94
Areas 7 and 8 combined	-65	-103	-84	-55
Borough Totals	-154	-239	-117	-29

22. The LA as a whole is clearly facing a shortfall of about eight forms of entry in 2022 and it can be seen that nearly half of this deficit is accounted for by the two adjacent planning areas which include the school. The reduction in its PAN from 210 to 180 is of course equivalent to one form of entry. The broader background is described by the LA in the following terms:

“....capacity issues in area 8 were to be addressed via a Free School allocated to Wigan LA. However, this allocation has now been withdrawn by the Department for Education. As a matter of urgency we are currently working with neighbouring schools to secure additional school places. We are reliant on Westleigh High school maintaining its current PAN of 210 to ensure we can meet demand, especially for the next 5 years.”

23. The school has commented on these projections, saying that:

“We do not, and have never challenged the basis of the school expansion to create capacity for the projection of students requiring a school place in areas 7 and 8 or that, at the time of the consultation, Westleigh High School was a suitable option.”

24. Data provided by the school and by the LA concerning first preferences and admissions show that for each of the past three years, the number of Year 7 admissions has been higher than the number of first preferences which had been expressed for the school:

Year	First preferences (LA and school figures)	“Applications received” which I understand to be total of expressed preferences (school figures)	Number of admissions (school figures)
2018	135	163	153
2019	130	177	161
2020	153 (LA figure) 135 (school figure)	210	187

25. So there has been a rising demand for places at the school in recent years, and places have been needed for children whose parents had expressed a first preference for a place at another school. The total demand has been below the level of the previous PAN of 210, but admissions in the current year are above the level of the revised PAN of 180.

26. The LA projection of future first place preferences for the school is:

Year	Projected first preferences
2021	148
2022	160
2023	147
2024	145
2025	146

I see these figures as consistent with the picture of an increased demand for local places, peaking in 2022, which was evident in the LA’s projections of the overall demand for places above. They would also be consistent, it seems to me, based on the evidence of the most recent years, with there being a need in practice for places at the school above the level of a PAN of 180 in future years. The school says it does not challenge the LA view of the need for places, but bases its case for a reduced PAN on the inadequacies of its buildings. It has also put forward another argument.

27. When the school set out its reasons for reducing its PAN to 180, it also expressed its concerns that, although the PAN “is not determinative of the numbers on roll for other year groups” that it believed that because of what it considers is a perception that there is capacity in other year groups, the school has been asked to accept “a disproportionate number” of in-year admissions. The figures provided to me by the school were as follows:

Year group (2019-20)	Number on roll	Cumulative number of “mid-term transfers”
7	157	5
8	155	15
9	197	27
10	203	24
11	158	12

28. The school has said in relation to its concern about the level of in-year admissions that it has been asked to accommodate by the local Fair Access Panel that:

“...although the main reason for reducing the PAN is because we do not currently have facilities to accommodate 210 in a year group, we believe that a PAN of 180 will help to put the School (sic) in a stronger position when we are talking to external parties about the number of in-year admissions that we can accommodate...”

29. The first thing for me to say is that this second argument cannot have any bearing on my view about the merits of the objection. I am concerned only with the admission arrangements themselves, and whether the PAN set for the school for 2021 should remain. Questions relating to the operation of the local Fair Access Panel do not, in my view, depend on the PAN for the school, but on the availability of places at the school to which, as the school acknowledges, the PAN is only material regarding the normal year of admission. Whether or not additional children can be admitted to other year groups in response to applications for places made by their parents is dependent on whether their admission would cause prejudice to the efficient use of resources or the efficient provision of education. While there can be no such prejudice below PAN in a normal year of entry, the PAN does not “carry on” through the school. I note in passing, however, that the capacity assessment for the school gives a figure of 1050, and that the number on roll in 2019-20 was 841.

30. I am persuaded by the information which has been given to me that it is highly likely that there is a demand for places at the school in September 2021, and beyond, in excess of the PAN of 180 which the admission authority has set for the school. I note the net capacity calculation for the school and the school’s Supplemental Funding Agreement with

the Secretary of State, both of which give the school's capacity as 1050. I do not consider that the need to ensure the availability of sufficient school places for children in schools within a reasonable distance of their homes should be set aside in the light of the accommodation deficiencies which the school has described to me, difficult though these may be. I also bear in mind that it would be several years before the school reached its calculated capacity, even if admissions for September 2021 and subsequently were at or near 210, and that this period is available to the parties to seek remediation of the school's accommodation difficulties. I am of the view that, should the PAN remain at 180 as determined, this is highly likely to cause unfairness to some local children who will have to travel an unreasonable distance in order to access an available school place. I therefore find that the school's arrangements, which include a PAN of 180 for admissions in September 2021, fail to comply with the Code's requirement in paragraph 14 that they be fair.

Other matters

31. The school has helpfully accepted that the references to "Atherton" and "Leigh" in its oversubscription criteria are an insufficiently clear indication to parents of whether they are likely to be afforded priority for admission on the basis of where they live, and has offered to rectify this "by reference to a map or specific postcodes". The LA has offered its assistance to the school in doing this. It is not for the adjudicator to approve or reject any such variation to the school's arrangements in advance of it being made, but the admission authority is able to vary its arrangements as it sees fit in order to comply with a ruling of the adjudicator. I am of the view that the arrangements as determined fail to comply with the requirements of the Code in paragraphs 14, 1.8 and 1.14 concerning their clarity.

Summary of Findings

32. For the reasons which I have given above, I am of the view that the school's admission arrangements fail to comply with the requirement that they be fair, by including a PAN of 180. I am also of the view that the arrangements are insufficiently clear in their description of geographical priority areas, and so fail to comply with the Code on the grounds of clarity.

Determination

33. I have considered the admission arrangements for September 2021 determined by the Shaw Education Trust for The Westleigh School, Wigan in accordance with section 88(5) of the School Standards and Framework Act 1998 and find that in relation to the determined PAN, the arrangements do not conform with the requirements relating to admissions. I have also found that there is a further matter which does not conform with the requirements relating to admission arrangements in the ways set out in this determination.

34. 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: 10 November 2020

Signed:

Schools Adjudicator: Dr Bryan Slater