

DETERMINATION

Case reference: ADA/002444

Objector: Thurrock Council

Admission Authority: The Gateway Learning Community Trust

Date of decision: 1 August 2013

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body of The Gateway Academy Trust.

By virtue of section 88K(2) of the Act, the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Office of the Schools Adjudicator by Thurrock Council, (the council), the objector, about the admission arrangements (the arrangements) for September 2014 for The Gateway Academy (the school), in Tilbury/Chadwell St Mary, Essex, a secondary school for pupils aged 11 to 18 years, for September 2014. The objection is to the fact that the arrangements continue to give differential priority to applicants from certain local primary schools.

Jurisdiction

2. The terms of the academy agreement between the proprietor 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 body of The Gateway Academy Trust, which is the admission authority for the school on 11 March 2013, on that basis.

3. In 2012 the arrangements for 2013 were brought to the attention of the adjudicator under section 88I of the Act. A referral was made in relation to the priority given within the oversubscription criteria to pupils attending the Gateway Primary Free School (GFS); and to children attending other primary schools within the Gateway Learning Community. The referrer pointed out that these schools had not been named and did not have the status of feeder schools. The adjudicator did not accept that for admissions in September 2013, provided the schools were named as feeder schools, giving priority for attending the three primary schools could be judged unfair.

4. Regulation 22 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012, as referred to by paragraph 3.3 of the School Admissions Code (the Code) prohibits the adjudicator considering within two years of a decision about an objection by an adjudicator an objection to the same or substantially the same objection under s88H of the Act. However, the referral in 2012 about the arrangements for 2013 was considered under s88I of the Act.

5. In this case, the objector submitted the objection to these determined arrangements for 2014, on 10 June 2013 and 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

6. In considering this matter I have had regard to all relevant legislation and the Code.

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

- the referral letter from the council dated 10 June 2013;
- the school's response dated 19 June and further correspondence dated 14 June and 10 and 23 July 2013 ;
- minutes of the governing body meeting on 17 December 2012 and copies of consultation documents;
- a copy of the determined arrangements agreed by the Board of Directors on 11 March 2013;
- the council's response to the objection dated 21 June 2013 and further information provided on 4, 19 and 23 July 2013;
- the council's booklet for parents, Primary Admission Information 2013; and
- a copy of the funding agreement dated 2006.

The objection

8. The objection from the council concerns the priority given for admission to the school, to children who have attended certain local primary schools. The council says that the school has published arrangements on its website for 2014 and these continue to give differential priority to applicants from certain local primary schools, but does not name them as feeder schools; nor provide the rationale, either for the reliance on them in the arrangements, or for the higher priority afforded to applicants from the GFS.

9. It is the view of the council that the arrangements do not appear to reflect by way of an amendment, the findings in a determination published on 7 February 2013 and which related to the arrangements for 2013.

Background

10. The school opened in 2006 as an Academy, sponsored by The Ormiston Trust, under section 482 of the Education Act 1996. The Gateway Learning Community Trust established in 2012 is a partnership between the school, Lansdowne Primary Academy, Herringham Primary Academy and a new primary academy school that is a free school which opened in September 2012, GFS.

11. The new school, GFS, is on the same site as the school and a new school building is currently under construction. The building is on track and expected to be completed by February 2014. Since it opened GFS has only recruited children into Year 6 and to Reception, but the GFS website explains to parents that from September 2014 children will be admitted into all year groups.

12. The headteacher of one of the local primary schools made a referral in December 2012, about the school's arrangements for 2013, following concern among headteachers that children were changing primary schools; and were seeking admission to GFS in order to gain priority for admission to the school. At the time, the arrangements gave priority to applicants at GFS and a lesser priority to children attending other primary schools within the Gateway Learning Community. The referrer pointed out that these schools had not been named and did not have the status of feeder schools.

Consideration of the factors

13. During the course of my investigation three different versions of the arrangements have been submitted to me and I have explored the reasons given by the school for this. The school says the first set of arrangements (version 1), published on the school's website, incorporated the changes agreed on 17 January 2013, following a meeting with the adjudicator who was appointed to consider the referral about the arrangements for 2013. When I looked at these arrangements I could see that the school had made several amendments. However, the issues raised by this objection remain to be considered. In the section subtitled, 'Procedures where the Academy is oversubscribed', the first priority (a) is given to looked after or previously

looked after children and the second criterion (b) prioritises siblings. The third and fourth criteria state: 'c) Admission of students who attend the Gateway Primary Free School and d) Admission of students who attend primary schools in the Gateway Learning Community. (Herringham Primary Academy and Lansdowne Primary Academy).'

14. This objection from the council says that although the published arrangements continue to give differential priority to applicants from certain local primary schools; they do not name them as feeder schools or provide the rationale, either for the reliance on them in the arrangements, or for the higher priority afforded to applicants from the GFS.

15. The school explained that a second set of arrangements (version 2), dated July 2013, had since been drafted in order to accommodate the issues raised by the council. This was sent to the council on 11 June and refers the reader to a set of footnotes. It states, 'c) Admission of students who attend the Gateway Primary Free School. ⁽¹⁾ and d) Admission of students who attend primary schools in the Gateway Learning Community. (Herringham Primary Academy and Lansdowne Primary Academy) ⁽²⁾.

Footnote

1. The Gateway Primary Free School pupils have priority due to the integrated relationship between the young people in the Free School and those in The Gateway Academy, including vertical pastoral systems and mixed age classes.

2. The Gateway Learning Community schools have priority due to the wholly collaborative relationships between the schools that include: common governance arrangements; joint curriculum delivery; shared inclusion services, joint activities for targeted pupils including those if SEND and who are Gifted and Talented and a holistic approach to support for vulnerable families.'

16. The council has made consistent efforts to ensure that arrangements of the school explain fully the rationale for naming three local schools as feeder schools, to provide greater clarity for parents. This is necessary to enable them to assess their chances of gaining admission to the school.

17. Having received a copy of version 2, the council made two further comments on 21 June 2013; firstly, that although the footnotes now provide information that might enable a parent to deduce that the GFS, Herringham Primary Academy and Lansdowne Primary Academy are being treated as feeder schools, these schools are not designated as feeder schools and secondly, there appears to be no explanation of the higher priority afforded to applicants from the GFS over applicants from Herringham Primary Academy and Lansdowne Primary Academy. The footnotes offer different rationales for priority being given, but do not explain the differential priority that is contained within the arrangements.

18. The school says that it has now made further amendments to the text (version 3); in a manner that it believes will accommodate the points raised by the council. The final version (3) states:

'c) Admission of students who attend the Gateway Primary Free School (a designated feeder school). The Gateway Primary Free School pupils have priority due to the All Through organisation of learning and the integrated

relationship between the young people in the Free School and those in The Gateway Academy, including vertical pastoral systems and mixed age classes.

d) Admission of students who attend primary schools in the Gateway Learning Community. (i.e., Herringham Primary Academy and Lansdowne Primary Academy are designated feeder schools). The Gateway Learning Community schools have priority due to the wholly collaborative relationships between the schools that include: common governance arrangements; joint curriculum delivery; shared inclusion services; joint activities for targeted pupils including those of SEND and who are Gifted and Talented; and a holistic approach to support for vulnerable families.'

19. Paragraph 1.15 gives permission for a school to name a primary or middle school as a feeder school and says that 'the selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds.' Paragraph 1.9b of the Code prohibits priority for admission to any previous school attended unless it is a named feeder school.

20. During my investigation, the school has clearly been willing to take account of comments made by the council and to amend the text of the admission policy in order to identify the three schools that it names within its arrangements, as feeder schools; and to provide the rationale for this decision. In my view the amended text should provide the transparency and the clarity that the Code requires, to ensure that parents can easily understand them. It should also help towards parents being able to make an assessment of whether or not an application for admission to the school would be likely to be successful, in as far as this is possible at the point that parents express their preferences. The school says, '....we believe we have made every attempt to follow both the spirit and the letter of the Code.....and we continue to ensure that the (school) is accessible to all children in Tilbury and Chadwell St Mary who wish to attend the school.

21. It is therefore unfortunate that the arrangements published by the school on the website for parents, do not incorporate either the explanatory footnote, to reflect version 2 sent to me by the school, nor include information about the designation of three local primary schools as feeder schools, with the rationale for that designation, (version 3). If an admission authority subsequently amends its determined arrangements, as in this case in order to give effect to a mandatory requirement of the Code, it must again take responsibility for ensuring that parents are aware of the changes that have been made. Paragraph 14 of the Code says, '....Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.'

22. All three feeder schools belong to the Gateway Learning Partnership (the GLP) and are situated in the area of Tilbury and Chadwell St Mary. Of the three, GFS has a close physical link with the school. The other two feeder schools are a little distance away and operate as completely separate schools during the school day. However, within the GLP there are strong collaborative

relationships between the schools, which include joint curriculum planning; shared inclusion services; joint activities for targeted pupils and common governance arrangements. In my view the designation of three feeder schools is objective and easy for parents to understand, so I will now consider the issue of the higher priority that is given to pupils who attend GFS.

23. The Code is silent on the matter of differential priority within a group of feeder schools. The new accommodation for GFS is being built on the same site as the school and the two schools already operate a shared vertical pastoral system, with some mixed age classes where children from both schools are taught together. In my opinion it should be easy for parents to appreciate and accept the rationale for the higher priority given to GFS pupils within the oversubscription criteria.

24. Although I accept that the text of the amended arrangements (version 3) provides much greater clarity for parents about the rationale for the designation of the three schools as feeder schools and about the higher priority afforded to pupils who attend GFS, the question remains as to whether the naming of these three local schools as designated feeder schools is reasonable and fair.

25. For the past five years the school has had a published admission number (PAN) of 180 and has admitted a full complement of students, with a range of intake size from 181 to 184. However the governing body has expressed concern about the number of children on the waiting list and this prompted a consultation about a staged increase to the PAN over two years, increasing the number of pupils admitted to 210 and then to 240. On 31 January 2012 the school consulted on changes to its arrangements for 2013. The consultation letter explained that the governing body had been considering the implications of the new free school (GFS); the projected increase in the number of primary pupils and the fact that the waiting list for the school had reached 140, comprised almost entirely of pupils living in the Tilbury/Chadwell St Mary area. Due to the combined effect of these factors the school wished to extend the consultation period for an additional four weeks and to consult formally on an increase to the PAN for 2013 from 180 to 210 and for 2014 for a further increase from 210 to 240.

26. However, at a meeting of the governing body on 17 December 2012 minutes record that the Board of Directors agreed that the PAN for 2013 would be 210 and for 2014 the school would be 'holding at 210', that is, it would not increase the size of the intake to 240.

27. At the same meeting it was noted that the PAN for GFS would be 72 for Year R and Year 6 in 2013 but that for 2014 the PAN would increase to 90 and children would be admitted to all year groups. It is likely that the influx of primary aged pupils into all year groups will impact on the overall numbers on roll at other local primary schools and this may then be reflected in a lower number of preferences expressed by parents in these schools, for the school.

28. Both GFS and Lansdowne have a PAN of 90. Herringham is smaller and has a PAN of 60. I can understand the council's concern that if all pupils

from the three named feeder schools, which have a total PAN of 210, were to successfully apply to the school, then children from other schools would have little or no chance of securing a place. The school has decided to retain a PAN of 210 for a further year to include admissions in 2014. This means that after considering applications from parents of children attending GFS not all Year 6 pupils from the other two feeder schools would be able to be admitted, should they all express a first preference for the school.

29. When I have reviewed the pattern of first preferences expressed for the school I found that to date, there have been consistent patterns which impact of the assessment of fairness in this case. Although Herringham has a PAN of 60 it is evident that during the period from 2008 until 2013 no more than 28 parents each year have expressed a first preference for the school. At Lansdowne, when the PAN was 70, between 46 and 50 pupils of the intake expressed a preference for the school. The PAN was increased from 70 to 90 in 2010 and in the four years since including 2013, the number of first preferences expressed has ranged from 33 to 50. The total number of 'other local children' expressing a first preference for the school over the past six years has ranged between 87 and 105. It is interesting to note that there appears to have been a reduction in the number of first preferences from both Lansdowne and in the group of 'other children' for 2013. One reason for this might be due to the number of pupils in those groups who have already transferred into Year 6 at GFS. As GFS develops and increases its PAN to 90, it may well attract children who currently attend other local schools.

30. When the PAN of a secondary school is equal to or lower than the sum of the PANs of its feeder primary schools, it could be argued that it becomes necessary, in order for an applicant to gain priority for a place at the school, for a child to have attended one of the feeder schools. In other words it becomes a condition of a successful application for a place at the school. If this were the case then the inclusion of the three named feeder schools would be likely to be ruled unfair.

31. The council has provided pupil projections for the school for the next five year period, in the area from which the school draws its pupils. This data indicates that there will be a steady increase in Year 6 pupils from 279 in 2014 to 385 in 2018. There are a number of alternative secondary schools for which parents can express a preference.

32. If one was only to consider the combined PANs of the three feeder schools (which total 240 places), with the expectation that 100 per cent of pupils from these schools would apply for a place at the school, which has a PAN of 210 for admissions in September 2014, then there would be a concern. However, given the historic pattern of parental first preferences from Lansdowne (no higher than 50 from a PAN of 90) and from Herringham (no higher than 28 from a PAN of 60), there would still be potential for the school to admit 42 'other children'. It is also possible that some parents of pupils at the GFS might wish to express a preference for an alternative secondary school. I have therefore concluded that for 2014, the year for which I have jurisdiction, the naming of the three feeder schools could not be deemed to be unfair, in that it remains possible for parents of children from other primary

schools to make a successful application to the school.

33. However, I would strongly urge the school in conjunction with the council to undertake a review at each admissions round, to note the proportion of each intake from the feeder schools and other local schools, to ensure that a situation does not arise in the future where applicants must attend one of the three feeder schools in order to make a successful application for admission to the school; and that there are no places available to be allocated to other local children. In such circumstances the naming of the three feeder schools could be considered to be unreasonable and likely to result in further objections.

34. In view of the fine balance at present which has led me to conclude that the arrangements for 2014 cannot be deemed to be unfair, it must be noted that if the school were to consider naming other local schools as feeder schools at any point in the future, then the issue of whether or not such schools could reasonably be designated as feeder schools, would again have to be considered afresh by the school, to assess whether or not such a designation could withstand scrutiny against the requirement of the Code, that arrangements were clear, fair and objective'.

35. Finally, for completeness it should be noted that the council contends that the current arrangements published on the school's website for parents do not appear to reflect, by way of an amendment, the findings in a determination published on 7 February 2013 and which related to the arrangements for 2013. The school needs to ensure that it complies fully with a determination.

Conclusion

36. During this investigation, the school has clearly been willing to take account of comments made by the council and has made efforts to amend the text of the arrangements in further drafts of the arrangements in order to provide the necessary clarity for parents. It is possible for the governing body to amend their determined arrangements in the following circumstances. The Code in paragraph 3.6 says that once arrangements have been determined for a particular academic year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of the Code, the admissions law, a determination of the adjudicator or any misprint in the admission arrangements. The governing body was therefore entitled to make these changes to their determined arrangements.

37. If an admission authority makes any amendments after arrangements have been determined, as in this case in order to give effect to a mandatory requirement of the Code, it must take responsibility for ensuring that both the council and parents are aware of the changes that have been made. It is not sufficient only to make those changes to internal documents, held by the school. Revised arrangements must be made available on the school's website at the very earliest opportunity to ensure that parents have all the information necessary for them to make an informed decision when

expressing a preference for a secondary school.

38. As described above I have considered the objection to the arrangements as determined by The Gateway Academy for admissions in September 2014 and made available, as required, to the council once determined. Those arrangements as presented do not meet the requirements in relation to feeder schools. I also considered whether the arrangements had been amended to take account of the previous determination as required by section 88K of the Act and concluded that insufficient action had been taken. For these reasons and as given above I determine that the arrangements do meet the requirements relating to admission arrangements.

39. However, I have also noted during my investigation that the school has responded positively to the points raised. It has already had regard to the objection and has made a number of changes in order to meet the mandatory requirements of the Code. It just remains to ensure that all the necessary changes are made.

Determination

40. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body of The Gateway Academy Trust.

41. By virtue of section 88K(2) of the Act, the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.

Dated: 1 August 2013

Signed:

Schools Adjudicator: Mrs Carol Parsons