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DETERMINATION

Case reference:	**ADA 2273 and 2331**
Objectors:	**Two parents**
Admission Authority:	**The governing body of King Edward VI Grammar School, Chelmsford, Essex.**
Date of decision:	**9 August 2012**

Determination

In accordance with section 88H (4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the governing body of King Edward VI Grammar School, Chelmsford for admissions in September 2013.

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 two parents, (the objectors), about the admission arrangements (the arrangements) for King Edward VI Grammar School, Chelmsford (the School), an 11-18 selective Academy school, for September 2013. The objection is to the proposal to introduce a priority area into the selective admission arrangements.

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, which is the admission authority for the Academy school. The objectors submitted their objections to these determined arrangements on 31 May and 30 June 2012. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
The documents I have considered in reaching my decision include:

i. the objectors' forms of objection dated 31 May and 30 June 2012;

ii. the School's response to the objections and supporting documents including an equalities impact assessment (the EIA) and an admissions consultation response;

iii. Essex County Council's, the local authority (the LA), composite prospectus for parents seeking admission to schools in the area in September 2012 and 2013 and their response to the objections;

iv. maps of the area identifying relevant schools and the residence of pupils of the School;

v. a copy of the 2011 funding agreement with the Secretary of State for Education;

vi. confirmation of when consultation on the arrangements last took place;

vii. copies of the minutes of the meeting at which the governing body of the School determined the arrangements; and

viii. a copy of the determined arrangements.

The Objection

4. The objections from the two objectors to the arrangements have several points in common and the list below includes all the matters raised. The paragraphs referred to are those in the Code:

i. Public consultation: The Public consultation was "flawed" because:

a. the consultation period was not "at least 8 weeks" in breach of paragraphs 15(b) and 1.43;

b. the consultation period was not completed by 1 March 2012 in breach of paragraphs 15(b) and 1.42;

c. of lack of open consultation with parents in breach of paragraphs15(b) and 1.44(a);

d. not all schools (for example Gidea Park College and Hare Park) were consulted in breach of paragraph 1.44(b);

e. the EIA was not circulated and therefore consulted on;

f. no alternatives to the proposed introduction of the priority area have been considered; and,

ii. Greenwich case: the proposals may be contrary to the court's decision in the R v Greenwich case.

iii. Commitments given on becoming an Academy :The headteacher and thus the School has broken the promise he made on 16 November 2010 when consulting parents about the change to Academy Status – that there would be no change made to the 11+ admissions policy.

iv. Arbitrary choice of figures: The "80%/20%" split and 12.5mile figures are neither explained nor justified from the documents provided. They are arbitrary figures not borne out of any analysis or reasoned argument and are therefore not procedurally fair as required by paragraph 1.8.

v. Sixth form arrangements differ from those for Year 7: The arrangements applying to sixth form entry do not include the priority area.

vi. The Equalities Act: The arrangements are in breach of the Equalities Act 2010, being either directly or indirectly racially discriminatory.

vii. Not fair, clear and objective: The School's admission arrangements fail to meet the requirements of paragraph 14 because they are not fair, clear or objective.

Background

5. The School became an Academy on 1 April 2011. Prior to its change of status, its last Ofsted inspection in 2006 deemed it to be an outstanding school. The report also stated that "*While it is a little smaller than most secondary schools, the sixth form is relatively large. Students are high attaining on entry in Year 7 with very few having learning difficulties or disabilities. Only boys are admitted at this stage and most stay for the whole of their secondary education. Boys and girls from other schools are accepted into the sixth form, in which girls comprise about one fifth….. An increasing number come from minority ethnic backgrounds, their proportion slightly exceeds that nationally, and all speak English fluently."*

6. The School has in the past selected pupils solely by ability measured by an entrance examination and admitted them in rank order of pupils who have achieved the required standard, up to the School's admission number.

7. It has decided to introduce a circular priority area of radius 12.5 miles from which it will accept 80 per cent of the intake who have achieved the required standard, by rank order of ability and then, the remaining 20 per cent in rank order of outstanding applicants who have achieved the required standard, whether they are inside or outside the priority area, up to the admission number. The objectors believe that this will discriminate against potential pupils from further afield and that because many of these are of ethnic minority backgrounds, this is in breach of the Equalities Act 2010.

8. Paragraph 12(c) of the School's funding agreement, which is the agreement between the Secretary of State for Education and the School on a

range of matters from governance to funding, states that "*the admission policy and arrangements for the school will be in accordance with admissions law, and the DfE Codes of Practice, as they apply to maintained schools*". In paragraph 12 (a), the funding agreement requires "*the school will be at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community*"

Consideration of Factors

I shall consider each of the objections in turn:

9. The public consultation: The objectors claim that the consultation period was not "at least 8 weeks" as required by paragraph 1.43 of the Code. The School states that the consultation started on 16 December 2012 and concluded on 29 February 2012. This is in accord with the minutes of the 26 January 2012 meeting of the governing body and comprises a period of over ten weeks. The matter was then considered by an admissions working party on 5 March and the governing body at a meeting on 12 March 2012. The objectors refer to these as having breached the 1 March deadline for consultation in paragraph 1.42 of the Code. However, the fact that the latter meetings are after the 1 March does not contravene the requirements of paragraph 1.42 of the Code for these meetings are part of the determination process which must be completed by 15 April 2012, as required by paragraph 1.46 of the Code. I am of the opinion therefore that the consultation period did meet the requirements of the Code.

10. The objectors state that there was lack of open consultation with parents. The School responded that the consultation appeared on the School's website and included a public meeting at a special meeting of the Parents' Forum on 1 February 2012 and significant local press coverage. The LA confirmed that it was consulted and the proposals were discussed at the Essex Admissions Forum of 21 February 2012 which supported the proposals after considering the relevance of the "*Greenwich Judgment*" and whether or not the proposals were "*fair, clear, objective and be able to be easily understood."* The School states that it received over 500 responses to the consultation; this is supported by the "KEGS Admissions Consultation Response" of March 2012 which documents 540 responses. I conclude that the consultation was thorough and widespread and included appropriate bodies and that there was sufficient consultation with parents. I therefore judge that the consultation met the requirements of paragraphs 15(b) and 1.44(a) of the Code.

11. The objectors state that not all local schools were consulted and give Gidea Park College and Hare Park School as examples. The School contends that it consulted with organisations as required by the LA's guidance. The Code requires in paragraph 1.44(b) that admission authorities must consult with other persons in the relevant area who in the opinion of the admissions authority have an interest. Both schools referred to are independent schools and therefore would not be normally consulted directly on the admission arrangements of a maintained school. Nevertheless, they could have responded if they had wished by considering the arrangements on the School's website. I therefore accept the School's view that these schools

do not have sufficient interest to be consulted individually and am therefore of the opinion that the School did consult appropriately as required by paragraph 1.44 of the Code.

12. The objectors state that no alternatives to the proposals were considered. However the School states that other proposals were considered, for example selection of pupils by musical ability and a post code based priority area. Indeed at the meeting of the Essex Admission Forum the proposal to select by musical ability was considered and rejected. Moreover, one proposal at this stage was the measurement of distance from the war memorial in Duke Street. These examples are illustrations of consideration of other proposals and I do not uphold the objector's contention on this matter.

13. The objectors state that the EIA was not circulated and therefore consulted on. This is confirmed by the date of the EIA being given as 22 March 2012 which is after the conclusion of the consultation period. However, the Code does not requires an EIA to be provided as part of the consultation process and I am of the opinion that it would be difficult to draw up EIAs on a range of proposals so it seems entirely reasonable to conclude the consultation process before investing resource into an EIA. Thus I do not support the objectors' view that the consultation was therefore in breach of the Code.

14. The Greenwich case: The objectors have raised the R v Greenwich judgement which held that pupils should not be discriminated against in relation to admissions because they live outside the local authority area in which the School is situated. The School believes that this judgment is not relevant because its priority area is not coterminous with the local authority area and it will still take pupils from outside this area. It is true that the priority area is not coterminous with the boundaries of the LA. Indeed the LA has opposed the measure because in its view it will reduce access to the School from other pupils from within the county boundary. It is my opinion that the priority area is not and cannot be construed as being similar to the boundaries of the local authority and therefore pupils are not being discriminated against because they live outside the local authority. I therefore do not support the objectors on this matter.

15. Commitments given on becoming an Academy: The objectors believe that commitments were given in November 2010, when the School consulted parents on a proposed change to academy status, that there would be no change to the admissions policy. The School argues that its commitment was that there would be no move to abandon selective admissions as a result of conversion to an academy: "*When the nature of selective admissions for academies was being debated, we made assurances that no move to abandon selective status would be made as a result of our conversion to Academy Status. This did not cover the parameters of our selective admissions, only that we would remain a selective school. .. The two issues are unrelated and no promises were broken".* Whether this was made completely clear or not at the time, I believe it would be unreasonable for the School to be unable to propose modifications to its admission arrangements as permitted by the Code and within a reasonably accepted definition of admission by selection which is part of the expectation of a traditional

grammar school. I believe that the School's proposals are within this expectation and I am unable therefore to uphold this part of the objection.

16. Arbitrary choice of figures: The objectors believe that the choice of 12.5 miles as the radius of the priority area is an arbitrary choice, as is the figure of 80 per cent of pupils to be taken from within this area.

17. The School states that a 12.5 miles radius circle is the best approximation to the CM (Chelmsford) post code areas but has the advantage of being the same distance from the School in all directions: "*both elements in our proposals have a rationale, as has been explained. The 12.5 radius area is the best fit balance between a circle that does not have a bias in any direction and the CM postcodes*." The School claims that numerous consultation responses were considered and the governors believed that the 12.5 mile radius area was the best balance in terms of competing demands and was the biggest area that could be justified in terms of home to school distance and travel times. The map supplied by the School shows the circle to be almost tangential to the M11 and M25 motorways and include several towns near to Chelmsford but exclude areas to the west of the M11 and within the M25. I am persuaded that the figure of 12.5 miles does provide a reasonable best-fit solution and has been carefully considered by the School. It is therefore my judgement that a 12.5 miles radius is not an arbitrary choice.

18. The School believes the 80 per cent figure was "*felt to be the most appropriate balance between the desire to reduce travel time and retain our local profile whilst retaining sufficient places for boys living beyond the circle."* I am persuaded therefore that the figures of 12.5 miles and 80 per cent provide a reasonable solution and these parameters have been carefully considered by the School. It is therefore my judgment that the figures are not arbitrary choices and do not breach the requirements of the Code as for example required in paragraph 14.

19. Moreover, the School has defined, with reasons, a priority area and defined the proportion of pupils to come from that area. Thereby it is ensuring that the larger proportion of pupils lives in the area in which the School is situated but has still made provision for those from further afield. It is my opinion therefore that the proposals comply with the Academies Act 2010, section 1A (1) (d), for an Academy School such that *"it provides education for pupils who are wholly or mainly drawn from the area in which it is situated."*

20. Sixth form arrangements differ: The objectors say that the sixth form admission arrangements are not the same as the admission arrangements for Year 7 pupils; they do not include the priority area. However, the Code does not require the arrangements for different ages of entry to a School to be the same. It is to be expected that the majority of pupils in the School will continue into the sixth form and that the numbers recruited externally will be much smaller and those pupils admitted will, of course, be older. It is not unreasonable therefore for the admissions processes to differ. I believe this has no bearing on the legitimacy of the Year 7 pupil admissions process or on the arrangements as a whole.

21. The Equalities Act: The objectors contend that the proposals breach

the requirements of the Equality Act 2010. The objectors refer to the School's EIA and claim that this shows that the introduction of the 12.5 mile radius priority area will be discriminatory towards potential pupils from ethnic minority backgrounds.

22. The School does not contest the figures shown in the EIA; indeed it compiled and published them. The data show that the proportion of the School's intake from ethnic minority backgrounds will grow from the current figure of 28 per cent whether or not the proposals are implemented. Without implementation the figure would increase to 40-45 per cent and if the proposals were implemented to 30-35 per cent.

23. However, the School claims that both ranges of these figures are higher than the equivalent for Essex (12 per cent) or Havering (23 per cent), that the selection process is completely neutral with respect to ethnicity and that up to 20 per cent of places will be available to pupils from outside the priority area. The School claims that it actively promotes equality and maintains an inclusive ethos.

24. The Equality Act 2010 makes it unlawful for the responsible body of a school to discriminate against a pupil or potential pupil in relation to admissions either directly or indirectly. Indirect discrimination occurs when a provision, criterion or practice is applied generally but has the effect of putting people with a particular characteristic at a disadvantage when compared to people without that characteristic.

25. It is clear to me that the School, as its own admission authority, is "the responsible body" and the arrangements constitute "provision, criterion or practice" which are indirectly putting people with a particular characteristic, in this case race, at a disadvantage.

26. It is a defence against a claim of indirect discrimination if it can be shown to be a proportionate means of achieving a legitimate aim. There are no claims that the School is directly discriminating, therefore this objection resolves to the questions:

i. are the aims of the proposals legitimate; and

ii. are the measures proportionate?

27. In its Admissions Consultation Response the School gives a statement of its aims in making these proposals: "*There is a need for a school, including a selective Grammar school, to have connections with other local schools and services that serve a community; the school needs to build relationships over time with primary schools, the local authority, social services and specialist provision for educational needs of various kinds. In this regard KEGS needs to retain a community profile. We do not have the capacity to build these relationships in more than one local authority."*

28. Paragraph 12 (a) of the School's funding agreement with the Secretary of State for Education states: "*the school will be at the heart of its community, promoting community cohesion and sharing facilities with other schools and*

the wider community" and the Academies Act 2010, section 1 (6) (d), says *"it provides education for pupils who are wholly or mainly drawn from the area in which it is situated."*

29. For these reasons I am convinced that the aims of the proposals are legitimate and the development of a stronger local profile will both meet the requirements of the funding agreement and the School's need to form strong community relationships, and comply with the Academies Act 2010.

30. The maps showing residency of the pupils of the School show that the establishment of a priority area as proposed will not include all of the current pupils' places of residence. However it is a substantial area, 25 miles across, and includes several other towns. Furthermore not all pupils will be necessarily drawn from this area; up to 20 per cent of places will be available for pupils living outside the priority area.

31. For these reasons, I believe that the measures that the School has taken to achieve its legitimate aim of being at the heart of its community do not go beyond what is reasonably required. I believe that the School has chosen a sensible and justifiable priority area. I therefore judge that the measures are proportionate.

32. For the reasons given in the above paragraphs, I am of the opinion that the aims of the proposals are legitimate and that the measures taken are proportionate. I believe therefore that the proposals do not breach the Equality Act 2010 and do not support the objectors in this matter.

33. Not fair, clear and objective: The objectors contend that the proposals are not fair, clear and objective as required by paragraph 14 of the Code. I believe that the proposals are easy for parents to understand, they clearly set out how pupils will be admitted. The arrangements are objective and procedurally fair. They do not place any conditions on the consideration of an applicant other than those in the arrangements and in my opinion comply with the Equality Act 2010. I therefore do not support the objection in this matter.

Conclusion

For the reasons given above:

34. I am of the opinion that the public consultation met the requirements of the Code, in particular paragraphs 15 and 1.42-1.43, and was not "*flawed*". There was open consultation for at least eight weeks which concluded before 1 March 2012. All appropriate schools and bodies were consulted and alternatives were considered. The EIA was not circulated as part of the proposals but this is not a requirement. I therefore do not support the objectors on these matters.

35. I judge that the proposals do not run contrary to the R v Greenwich Judgement.

36. I judge that the commitments given on becoming an Academy in 2010 have not been broken and do not support this objection.

37. The chosen parameter of 12.5 mile radius is well considered and appropriate and together with the 80 per cent parameter ensures that the proposals comply with the Academies Act 2010. I do not believe therefore the choice of these parameters lead to any breach in the arrangements' compliance with paragraph 1.8 of the Code and do not uphold this as an objection to the arrangements.

38. The sixth form admission arrangements differ from those of Year 7 entry. However, in my judgment, this is reasonable, does not breach the Code and does not have a direct bearing on the legitimacy of arrangements for Year 7.

39. I am of the opinion that the proposals are compliant with the Equalities Act 2010 because the aims of the proposals are legitimate and the measures chosen to achieve these aims are proportionate.

40. Finally I believe that the proposals are fair, clear and objective as required by paragraph 14 of the Code.

Determination

41. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the governing body of King Edward VI Grammar School, Chelmsford.

Dated: 9 August 2012

Signed:

Schools Adjudicator: Melvyn Kershaw