

## **DETERMINATION**

**Case reference:** ADA/002420

**Referrer:** East Sussex County Council

**Admission Authority:** The Governing Body of Seaford Head School

**Date of decision:** 17 July 2013

### **Determination**

**In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Seaford Head School for admissions in September 2014 and I determine that they do not conform to the requirements of the legislation and the School Admissions Code in relation to the matter referred to me and other matters.**

**The School has already had regard to the referral and has made a number of changes in order to meet the mandatory requirements of the Code.**

**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. The admission arrangements (the arrangements) of Seaford Head School (the school), a secondary academy in Seaford for pupils aged 11 to 16 years, for September 2014, have been brought to the attention of the Office of the Schools Adjudicator (OSA) in a letter dated 1 May 2013. The referral questions the rationale for a reduction of the published admission number (the PAN) for admissions in 2014 from 240 to 220, in light of the previous decision by the governing body to enlarge the schools' community area, that is, the catchment area, for arrangements determined for 2013.

### **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 proprietor, that is, the governing body of Seaford Head Academy Trust,

which is the admission authority for the school, on that basis.

3. In 2012 an objection to the school's admission arrangements in relation to its decision to reduce its PAN and increase its catchment area was made to the OSA. The adjudicator upheld the objection concerning the reduction in PAN and did not uphold the objection to the increase in catchment area. Regulation 22 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012, and paragraph 3.3 of the School Admissions Code (the Code) prohibit the adjudicator considering within two years of a decision by an adjudicator an objection to the same or substantially the same objection under section 88H of the School Standards and Framework Act 1998 (the Act). However, arrangements that come to the attention of the adjudicator may be considered under section 88I of the Act. These arrangements were brought to the attention of the adjudicator on 1 May 2013, under section 88I of the Act.

4. I am satisfied that it is within my jurisdiction to consider the arrangements under section 88I of the Act.

5. Having reviewed the arrangements for 2014 in relation to the matters brought to my attention I have also used my power under section 88I of the Act to consider the arrangements as a whole. The arrangements for 2014 include those determined by the governing body for admission to the new sixth form. The sixth form was recently approved by the Education Funding Agency (the EFA) on behalf of the Secretary of State for Education.

### **Procedure**

6. In considering the arrangements for admissions in September 2014, I have had regard to all relevant legislation and to the Code.

The documents I have considered in reaching my decision include:

- the referral from East Sussex County Council (the council) dated 1 May 2013;
- responses to requests for further information from the council, dated 7 and 17 June 2013 and supporting documents;
- a copy of the determined arrangements for 2014 approved by the governing body on 26 March 2013 ;
- annex B of the funding agreement 'Requirements for the admission of pupils to Seaford Head School';
- a copy of a Deed of Variation signed by the trustees on 26 February 2013;
- the school's initial response to the referral dated 9 May 2013 and supporting documents; and

- additional responses from the school and correspondence up to 8 July 2013.

7. I considered the arrangements and sought a meeting with the school and the council to discuss the referral; and my additional concerns about aspects of the arrangements which I considered might not be fully compliant with the Code.

8. I have taken account of information received during the meeting I convened on 11 June 2013 at the school and further information which has been submitted since that meeting by the council and by the school.

### **The Referral**

9. The referral questions the reduction of the PAN from 240 to 220 in light of the decision by the governing body in 2012, to enlarge the school's community area for admissions in 2013. The referrer contends that the reduction in the number of available places may affect families living within the recently enlarged community area but furthest from the school, as they may not have their preference for a place at the school met. It will reduce the school's flexibility to accommodate families moving into the area; and as projections indicate an increasing demand for places at the school in future years, the school would be unable to accommodate all applicants.

10. The Code states in paragraph 14 that 'in drawing up their admission arrangements, admission authorities must ensure that the practices used to decide the allocation of places are fair, clear and objective. Paragraph 1.2 of the Code says that in determining their admission arrangements all admission authorities must set an admission number for each relevant age group and finally at paragraph 1.3 the Code explains that admission authorities must consult if they propose to decrease their PAN.

### **Other Matters**

11. At the meeting I held at the school, I raised other aspects of the arrangements for admission to Year 7 that appeared to contravene the requirements of the Code. These relate to the lack of clarity for parents about the priority given to the admission of the children of staff and the omission of a final tiebreaker.

12. I also considered the arrangements that have been determined for admission to the new sixth form in September 2014 and raised a number of issues for consideration at the meeting. These include the lack of information about the admission of students with statements of special educational need that name the school; the requirements to set a PAN for external students and to give first priority within the oversubscription criteria to looked after and previously looked after children; the necessity to remove the requirement for external applicants to provide a reference from their schools and the need to include a final tiebreaker.

## **Background**

13. The school had community school status until September 2011 when it became a foundation school with a trust. In September 2012, the school then converted to become an academy school for pupils aged 11 to 16 years and now forms part of the South Downs Alliance with Hailsham Community College, an 11 to 18 school in Battle and two Eastbourne schools, the Cavendish School and Ratton School, which both provide for pupils aged 11 to 16 years.

14. The school is situated on three separate sites, Steyne Road Annex which provides for pupils in Years 7 and 8; Arundel Road which makes provision for pupils in Years 9, 10 and 11 and a site in Cricketfield Road which used to house the previous sixth form before it closed.

15. After a gap of several years during which there has been a strong focus on raising standards in key stages 3 and 4, the school has decided to re-establish a sixth form. A capital investment grant of approximately £1.7m. has recently been confirmed by the EFA to refurbish certain areas of the school and to provide additional accommodation.

16. I was advised at the meeting that since the decision by the governing body to reintroduce a sixth form, consent has been given to open two new free schools in the area. The school explained that both new schools would admit applicants into their sixth forms and there were now concerns that this development could negatively affect the viability of the sixth form at the school, due to open in September 2014.

17. Having checked after the meeting, I discovered that the first school, Clean Tech University Technical College (the UTC) will admit 600 students aged 14 to 18 years, in nearby Newhaven. When it opens in September 2015 it will specialise in Environmental and Marine Engineering. The council reports that Peacehaven Community School to the west of Newhaven is full and under pressure for places. Information on the college's website indicates the intention to recruit pupils from a very wide area which includes the neighbouring county of West Sussex. The second new free school will provide for pupils aged 4 to 18 in Eastbourne. Gildredge House will open this year in September 2013 with admissions into Year R (56) and Year 7 (120) only. It plans to admit pupils living in the areas of East Dene, Polegate, Willingdon and Eastbourne. The admission policy states that the school does not expect to admit external applicants to its sixth form unless it is undersubscribed from pupils progressing from within the school.

## **Consideration of Factors**

18. The council acknowledges that the consultation and determination of arrangements at the school for 2014 were completed in accordance with the requirements of the Code and of regulations. During the consultation period, the council asked the school to explain why it wished to decrease the PAN but maintains that there was no response. However, a copy of a response to the

council dated 27 March 2013 has been provided by the school and it says that the governors had carefully considered all responses to the consultation and in particular, the demographic Year 7 forecast data provided by the council.

19. At the meeting I convened at the school, the governors explained that they had taken account of the letter in their deliberations and as a result, the governing body had changed the PAN proposed for 2014 from the original 210 to the higher 220. The council clarified that it had meant to say that there was still no rationale given in the reply from the school which explained the need to decrease the PAN.

20. I noted that the governors advised the council in their response that 'a school can oblige a local authority to put out offers above the PAN subject to notifying the council in good time so that it could manage its co-ordination process effectively'. The governors wanted to advise the council that if necessary they would admit above the PAN. Following the determination of arrangements by admission authorities it is expected that they will not be revised unless there are particular circumstances which require a request for a variation. Although a decision to increase a school's PAN no longer constitutes a variation in terms of a referral to the adjudicator, I do not believe it is the Code's intention to remove altogether, the responsibility from an admission authority to publish a firm number of places, which accurately reflects the capacity within the school, so that parents can assess their chances of admission to different schools.

21. The Code in 1.4 states, '.....If, at any time following the determination of the PAN, an admission authority decides that it is able to admit above its PAN, it **must** notify the local authority in good time to allow the local authority to deliver its co-ordination responsibilities effectively.' I would argue that the intention here is to enable schools to work flexibly with local authorities when particular circumstances arise, such as an unexpected influx of pupils into the area, or a sudden reduction in the number of available places at any given school, in order to ensure that all children receive the offer of a place. On the other hand if several admission authorities in an area, elected annually to change the determined PAN that they had published and 'obliged the LA to offer above the PAN', it would make it extraordinarily difficult for parents to be able to understand and assess their chances of admissions to particular schools and it would introduce a measure of uncertainty and unfairness, which in my view would not be reasonable.

22. In response to the referral from the council, the school explained its rationale for the reduction of the PAN as follows. When the school had been a community school the council had allowed it to reduce the PAN in 2009 and 2010 to 210, and but no applicants had been refused admission as a result. Therefore a reduction to 220 for 2014 would not compromise parental preference. The council says that it agreed to the lower PAN for these two years only because of the actual (lower) number of pupils in the system at that time.

23. The school says that in 2010 when arrangements for 2011 were determined by the council, as the admissions authority for the school at the time, the attention of the governing body was focused on the bid for a new sixth form and other matters, and it had overlooked the need to request that the PAN remained at 210 for 2011. As a result the council had changed it back to 240. The council says the rationale for this decision was supported by pupil projections and by a duty to look strategically at the overall provision of school places in the area. With capacity for 1200 pupils, the school had an indicated admission limit of 240.

24. In 2012 when the school became a foundation school with a foundation, often called a trust school, a PAN of 210 was determined for 2013 and at the same point the school sought to enlarge its community (catchment) area. There was a formal objection by Tideway School (Tideway) to these changes and as a result, although the change to the catchment area was approved, the decision to decrease the PAN was not and it reverted once more to 240 for September 2013.

25. I notice that the school's admissions policy for 2013 stated that arrangements would be reviewed in two years time, that is, for admissions in 2015/16 and enquired why the governing body had then reviewed them after just one year. The school referred to the determination published on 18 June 2012 stating that the PAN for 2013 could not be decreased for that year, so a decision had subsequently been taken to review the PAN a year earlier than originally planned, with the intention of decreasing the number for 2014.

26. The council states that they had asked the governing body during the consultation for their reasons for wanting to reduce the PAN and in the absence of any new rationale for 2014, they had concluded that the reason given in 2012 for the reduction, was still that contained in an email sent at the time from the headteacher to the chairman of governors. This explained that the main reason driving the proposal to reduce the PAN was a desire to limit in-year admissions, due to concerns about the impact on performance data and pupil outcomes at key stage 4.

27. When I asked if retaining a PAN that reflected their actual minimum capacity caused any practical issues, I was told that this year the school has had to manage a situation caused when several children had to be admitted into a single year group, mid year. These pupils had all transferred from Tideway. The school strongly refuted the allegation that the desire to reduce the PAN was in any way linked to concerns about overall performance, stating that it was an inclusive school.

28. When I asked why the governing body wanted to decrease the PAN given that it had ample capacity and further, why they wanted to change it annually, I was advised that they were monitoring both their own and council projections and trying to keep the PAN close to their own projections. It is the school's view that the two sizable housing developments in the area in the last four years have not yet had any significant impact on the secondary sector and that any impact is unlikely before 2020. The admissions committee

monitors the demographic population trends and seeks to adjust the PAN appropriately to meet the needs of the community.

29. The school states that reducing the PAN will not compromise parental preference or prevent families new to the area from being admitted. While it is accurate to say that the expression of parental preferences would not be constrained, the ability to meet those preferences might well be affected if a PAN is held at an artificially low level. As the council says, families living within the recently enlarged community area but furthest from the school, may be disadvantaged as they might not have their preference met, for a place at the school.

30. In looking at the arguments put forward by the council and the school it is evident that one of the key issues at the heart of the debate is the difference between and the accuracy of the school's own pupil projections and those of the council.

31. The school reviews the number of pupils in the set of primary schools from which it admits the majority of its intake to Year 7 and other primary schools, taking into consideration the proportion that elect to express a preference for the school. It has concluded that its own projections indicate that a PAN of 220 would not be exceeded until 2018 and that the council's projections show that a PAN of 220 would not be breached until 2020. The school now has a shared catchment area with Tideway School in Newhaven, the nearest 11 to 16 school and notes that this school has considerable spare capacity. The school believes there is sufficient overall capacity in the two schools to provide places for all pupils in the area and that therefore a reduced PAN at the school would not limit parental preference.

32. The shared catchment area between Tideway and the school came into existence in 2013 because the school enlarged its catchment into an area that had been the sole preserve of Tideway, a community school and therefore one where the council retains responsibility for admissions. The council says it was not minded to change the catchment area for Tideway and the expansion of the community area by the school in 2013 was contradictory to the decision to reduce the PAN for that year. Projections for Tideway indicate that demand is rising, although more slowly than the school, but that its PAN of 150 will be exceeded in future years. The council remains concerned that with a reduced PAN there will be insufficient places overall to meet the increasing demand for places.

33. The council's view is that the school's projections do not take sufficient account of a number of relevant factors such as the 'pupil product' from new housing or the number of pupils drawn from further afield and that there is now a pattern of parental preference showing an upward trend in the group of children who live further afield. There were 14 such children admitted in 2011, 25 in 2012 and 34 are due to start in September 2013. The council's own projections on the other hand do take account of such additional factors in the Pupil Forecasting Model, which is one reason that it has consistently forecast

higher numbers, and in the view of the council explains why these figures are more accurate.

34. The model takes into account pressures that already exist across the entire area, which is consistent with the duty of the council to look strategically at the impact of decisions by admission authorities and to ensure that there are sufficient places to accommodate all children. Peacehaven schools are facing significant pressure on places and the rising demand in both Seaford and Newhaven are forecast. The council says that there will certainly be a demand for more than 220 places at the school and a decreased PAN will negatively affect the ability to meet parents expressed preferences. In its view the governing body appears to be suggesting that if pupils are refused a place at the school, Tideway can and therefore should admit them. The council contends that in making this suggestion the school is acknowledging that a reduced PAN may well not meet the future demand for places.

35. At our meeting in June the latest council projections were provided and these indicate that with the 'pupil product' expected from the housing developments gradually feeding into the secondary sector, the projected pupil numbers have increased for both the school and for Tideway. Progress with these developments is checked annually with the district council. Sites for approximately 166 of the 430 units of housing are known to the council, so there is the possibility of considerable additional building of new homes in Seaford, in the pipeline. In that area of neighbouring Newhaven which forms part of the expanded community area for the school, planning approval has been granted for 190 units.

36. The council's projected pupil numbers indicate that with a PAN of 220 the school would be oversubscribed from 2014 onwards and in every year until 2021, with the exception of 2016 where 219 pupils are projected. I accept that these are the latest figures and different from those available to the governing body at the time of their decision to reduce the PAN, but they do clearly indicate increasing numbers, to the extent that both schools are projected to be full and oversubscribed by 2019 and the school has acknowledged this fact.

37. The school says it is inclusive and seeks to cater fully for the local community. In my view it follows that it is important therefore, to have a PAN that reflects as accurately as possible both the school's actual capacity and its responsibility to provide efficiently and effectively for local families. The rationale of the school for the proposal to reduce the PAN has not convinced me that a PAN of 240 places any additional pressures on the school.

38. In response to a request from me at the meeting, the council officer has checked whether or not the projections provided at the meeting included the possible impact of the two new secondary free schools, in Newhaven and Eastbourne. The council explained that due to the existing pressures in other communities where the schools will be established, the new schools are unlikely to affect the growing demand for places in Seaford.

39. The Year 7 forecasts take account the actual number of Year 6 pupils on roll in local schools at the time of the January census. The forecasting model makes an adjustment based on the pattern of preferences expressed (an uptake factor), over a period of three years. The council contends that throughout the consultation about the new UTC in Peacehaven, the school has stated that it does not expect the new school to have any impact as it is considered unlikely that students would wish to travel away from Seaford to access courses. Whilst the council does not expect the free school in Eastbourne to have any significant effect on numbers at Seaford, it does anticipate that the addition of a sixth form at the school, providing places in Seaford from 2014, will make the school even more popular with parents.

40. The council's methodology is applied to all schools and takes account of a greater number of pertinent factors than that of the school and I have to conclude that in these circumstances it is reasonable to give more weight to the council's projected figures.

41. It is my view that with steadily increasing demand for places in Seaford and the draw of new sixth form provision, combined with the pressure on places in Newhaven and Peacehaven to the west, that the decision to reduce the number of available places at the school may well affect families living within the recently enlarged community area but furthest from the school and it is entirely possible that a decreased PAN would affect families moving into the school's community area during a school year and that they are likely to find that they are unable to access a place at the local secondary school of their choice.

42. The original funding agreement for the school, drawn up in 2012 when the school converted to academy status notes in clause 17 that 'the planned capacity of the Academy is 1200 in the age range 11-16.' Following approval for the re-establishment of a sixth form, a Deed of Variation was issued in which clause 17 is replaced, to take account of the additional accommodation that will be created at the school. It notes the changes to the capacity and the age range of the school and states that the school will have, '1555 places for pupils aged 11 to 18 years, with a sixth form of 355'.

43. The school is popular with local families. The majority of pupils in the Year 7 intake attend three local primary schools where well over 90 per cent of pupils transfer at age 11. Approximately 40 per cent of the intake of a further two primary schools generally transfer and over 30 pupils are drawn from a wider area. If local children who live within the area catchment and need a school place are to be denied entry there must be very good reasons. The council argues that the school should set its admission number at the actual capacity it can admit and I am mindful of the fact that the council is only asking the school to provide places within its minimum assessed capacity. I agree with the council's view that pupil projections indicate an increasing demand for places at the school in future years, and with a reduced PAN the school would be unable to accommodate all applicants. For these reasons and those given above I conclude that to decrease the PAN would mean that the admissions arrangements do not conform with the requirements of the

Code at paragraph 14 which says, '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.' and in your view to reduce the. In my view to reduce the PAN would be unfair to families in the area, especially those in the extended catchment area.

### **Other Matters**

44. As mentioned earlier, there were several matters where the arrangements as a whole appeared not to comply with the mandatory requirements of the Code and I discussed these with the school.

45. With regard to Year 7 arrangements, there is a section titled, 'Definition of the distance to an intending pupil's home'. There are three explanatory paragraphs; the first explains that distance will be measured using the council's geographical information system and the second helps parents to appreciate how this applies to the split site nature of the school. However, the third paragraph does not relate to the measurement or definition of distance but introduces another unnumbered oversubscription criterion giving priority to the children of staff. I suggested to the school that parents who are not concerned about the definition of distance might well be unaware that a further criterion was being described in the final paragraph of that section. The school readily agreed to move the criterion into the body of the oversubscription criteria and to provide it with a number so that parents can easily see and understand that priority is given to the children of staff members.

46. The second issue relates to the omission of a tiebreaker. In the unlikely event that two or more children living the same distance away from the school and in all other ways have equal eligibility for the last available place at the school, there must be a method of separating the two applicants that is known by parents. The Code says in paragraph 1.8 that admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated. The school agreed to include a tiebreaker in the 2014 arrangements.

47. I then moved on to consider the arrangements that have been determined for entry to the sixth form. As it is likely that external applicants will only read the arrangements for the sixth form and will not refer to Year 7 arrangements it is necessary for the school to state clearly that all children whose statement of special educational needs names the school will be admitted, as this is a mandatory requirement explained in Code 1.6. The school agreed to insert text to this effect.

48. The governing body has determined arrangements for admission to the new sixth that is due to open in September 2014. These state that the governors will admit 180 students to Year 12 and that 'in the event of

oversubscription for candidates who meet the entrance criteria the governors will make the final decision based upon the admissions criteria, distance to and from the school and the capacity of Seaford Head Sixth Form centre.' The capacity of the sixth form is 355 and the governing body intend to establish a sixth form with two year groups of 180. The school intends to offer a number of places to external applicants but to date they have not determined a PAN

49. The Code 1.2 states that as part of determining their arrangements, all admission authorities **must** set an admission number for each 'relevant age group'. This is defined in section 142 of the Act as 'an age group in which pupils are or will normally be admitted', in other words a PAN refers to the number of new children to be admitted to a school and should not be confused with the capacity of the sixth form, as in this case. From September the school will have two relevant age groups, Year 7 and the new Year 12.

50. Code 1.6 requires the admission authority for the school to set out in their arrangements the criteria against which places will be allocated at the school when there are more applications than places and the order in which the criteria will be applied. In other words it is not sufficient just to publish the academic entry requirements and to state that distance will be the deciding factor in determining the allocation of places.

51. The school agreed to consider an appropriate PAN for Year 12 for 2014. It says that it expects that the majority of places to be allocated to existing pupils progressing from Year 11 who meet the academic entry requirements. Since our meeting the school has considered a PAN of 100 for external candidates, which it has subsequently reduced to 80 and finally to 60. I understand that there remain concerns among the members of the governing body that this may still be too high, to enable all students currently on roll at the school and who subsequently meet the academic entry requirements to transfer into the sixth form. I would therefore strongly advise the governing body to keep this number under review. With a year group size of 240 and a guarantee of a place for all students on roll in Year 11 who meet the academic entry requirements, should there be 60 or more external applicants, the school will have to be prepared to make provision for these students, in addition to those for existing students who meet the entry requirements, on sixth form courses.

52. As with other points of entry to schools, highest priority in oversubscription criteria for sixth form places **must** be given to looked after children and previously looked after children who meet the academic entry criteria (Code 1.7 and 2.6). It is not sufficient to give priority to these students in the Year 7 arrangements only and the school's commitment must be restated in arrangements for Year 12. The school willingly agreed to insert this information.

53. As part of the explanation to parents and students about the academic entry requirements for the sixth form, the school asks for a school reference from external applicants. When I enquired what additional information the

school might need and why it would need anything other than confirmation of academic achievement, I was advised that it was included merely because the school had to provide such references for admission to the Further Education College. However, the Code does not relate to admissions to colleges of further education but it does forbid admission authorities for schools from requesting reports from previous schools. The school is now aware of the Code requirements and readily agreed to remove this aspect of the oversubscription criteria.

54. Finally, as with Year 7 arrangements, the school does need to include a tiebreaker final to deal with the situation in the event that two or more children living the same distance away from the school and in all other ways have equal eligibility for the last available place at the school. There must be a method of separating the two applicants that is known by parents. The school has moved quickly to include this clarification for parents.

55. In summary then the arrangements for Year 12 did not include a PAN for external applicants, omitted a statement about the admission of children with statements of special educational need that names the school; failed to give priority to looked after and previously looked after children; requested school references from external applicants and did not include a final tiebreaker. These matters all need to be dealt with in order to comply with the Code.

## **Conclusion**

56. With regard to the referral I have concluded that the arrangements of the school do not comply fully with legislation and the Code.

57. In addition I have considered the 2014 arrangements with the school and have concluded that several aspects of the arrangements do not comply with the Code. In this case, the school has readily accepted that aspects of its arrangements did not meet the requirements of the Code and it has immediately agreed to amendments for inclusion in the revised arrangements in order give effect to mandatory requirements.

58. Once admission 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 this Code, admissions law, a determination of the Adjudicator or any misprint in the admission arrangements. The governing body met on 2 July 2013 to approve the changes.

## **Determination**

59. In accordance with section 88(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Seaford Head School for admissions in September 2014 and I determine that they do not conform to the requirements of the legislation and the School Admissions Code in relation to the matter referred to me and other matters.

60. The School has already had regard to the referral and has made a number of changes in order to meet the mandatory requirements of the Code.

61. 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: 17 July 2013

Signed:

Schools Adjudicator: Mrs Carol Parsons