DETERMINATION

Case reference: **ADA 2272, 2280 and 2330**

Objectors: **Three parents**

Admission Authority: **The governing body of Chelmsford County High School for Girls, 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 Chelmsford County High School for Girls, 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 three parents, (the objectors), about the admission arrangements (the arrangements) for Chelmsford County High School for Girls, 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 admission 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 2 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 2 and 30 June 2012;

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

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. a map of the area identifying relevant schools;

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 three objectors to the arrangements have several points in common and the list below includes all the matters raised. The paragraphs 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; and,

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

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

iii. 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.

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

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

vi. 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. Chelmsford County High School for Girls became an Academy on 1 April 2011. Prior to that, its last Ofsted inspection of 2007 deemed it to be outstanding. The report also stated that "*Chelmsford County High School is a highly selective grammar school drawing girls from a wide area around Chelmsford. Competition for places is fierce; applicants take an 11+ examination with one in five being admitted. Students join from around 70 primary schools and significant numbers join from the private sector. One in five students are from minority ethnic groups and one in ten speaks English as an additional language. The vast majority of students continue their studies in the sixth form, where they are joined by about 20 who transfer from other schools*."

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 the 15 December 2012 and concluded on 13 February 2012; this comprises a period of over eight weeks. The School says that the consultation was followed by a meeting of the governing body on 3 March 2012 at which the arrangements were determined. The objectors refer to this meeting as having breached the 1 March deadline for consultation in paragraph 1.42 of the Code. However, the fact that the latter meeting is 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 contends that the consultation appeared on the School's website on 16 December 2011 and parents were notified by email on 15 December 2011. The School has provided a copy of the press advertorial placed in the Essex Chronicle in the week of 16 January 2012 and a copy of the email sent to local schools on 31 January 2012. The School claims that it consulted with over 220 local schools, and five neighbouring local authorities.

11. 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 249 responses to the consultation. 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.

12. 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 does not have official feeder schools but consulted with over 220 local schools based on data provided by the LA. 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 admission 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.

13. The objectors state that no alternatives to the proposals were considered. However the School says 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.

14. 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 29 February 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.

15. 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.

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

17. The School claims that numerous consultation responses were considered and the governors believed that the proposals were "*a way of replicating the traditional proportions of children who live within the 12.5 miles of the School, currently from Year 10 upwards. These proportions are known to work well in allowing full participation from all students in the wide range of school activities available to compliment the formal curriculum."*

18. The map supplied by the School shows the circular priority area 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 figures of 12.5 miles and 80 per cent do provide a reasonable solution and these parameters have been carefully considered by the School.

19. Moreover, because the School has defined, with reasons, a priority

area and defined the proportion of pupils to come from that area, 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. It is therefore my judgment that the figures are not arbitrary choices and meet the requirements of the Code, as for example required in paragraph 14, and the Academies Act.

21. Sixth form arrangements differ: The objectors say that the Year 7 admission arrangements are not the same as the admission arrangements for sixth form pupils which 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 admission processes to differ. I believe this has no bearing on the legitimacy of the Year 7 pupil admission process or on the arrangements as a whole.

22. 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.

23. The School does not contest the figures shown in the EIA; indeed it compiled and published them. In the EIA, the School states: "*The scale of the change is such that the proportion of the school intake from ethnic minority backgrounds would reduce from 37% currently to 28% with the proposals in place, rather than rising to 46% if the admissions policy is unchanged and current trends continue".*

24. However, the School says "*Both of these figures (with or without the proposed changes) represent a very high degree of ethnic diversity relative to the school's immediate community in Chelmsford and Essex …….. (*which is) *10% non-white British females aged 0-15 locally"* and that *"CCHS (*the School*) actively promotes and maintains a profoundly inclusive ethos; we celebrate diversity in many ways and it is deeply embedded in the school culture that all students are equally valued and their ethnic diversity celebrated".*

25. 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.

26. 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.

27. 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?

28. In its EIA the School states "*It is our view that the School's success and strength to date has been dependent on our anchorage in the community and this should not be jeopardise by attempting to serve, in larger proportions, a geographical area beyond the limits of our finite resources. As a small school, regardless of our academic status, CCHS draws strength from a number of partnerships with local schools, local organisations and Local Authority services that are exclusively located in Essex. We do not have the resources to extend these partnerships into other Authorities in order to support increasing numbers of students who do not live in the Essex Authority area."*

29. 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 1A (1) (d), says *"it provides education for pupils who are wholly or mainly drawn from the area in which it is situated."*

30. 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 need to form strong local community relationships, and comply with the Academies Act 2010.

31. The map showing the priority area shows it to be a substantial area, 25 miles across, which 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.

32. 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.

33. 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.

34. <u>Not fair, clear and objective:</u> 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:

35. 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.

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

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 Chelmsford County High School for Girls.

Dated: 9 August 2012

Signed:

School Adjudicator: Melvyn Kershaw