



DETERMINATION

Case reference:	ADA 2692
Objector:	Essex County Council
Admission Authority:	Burnt Mill Academy Trust for Freshwaters Primary Academy, Harlow, Essex
Date of decision:	6 October 2014

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the arrangements determined by the Academy Trust for Freshwaters Primary Academy for admissions in 2015.

I have also considered the arrangements in accordance with section 88I(5) of the Act. I determine that there are other matters as set out in this determination that do not conform with the requirements relating to admission arrangements.

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 so that they conform to the Code.

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 (OSA) on 23 June 2014 about the 2015 admission arrangements (the arrangements) for Freshwaters Primary Academy (the school). The objection relates to the reduction of the published admission number from 40 to 30 for 2015. Essex County Council (the objector and local authority) says that the reduction is unfair as there is capacity in the school for an admission number of 40 so the reduction acts against parental preference and the need for places thus making this an unreasonable action by the admission authority.

Jurisdiction

2. The terms of the academy agreement between Burnt Mill Academy Trust (the Trust) and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the local advisory board for the school which had delegated authority from the Trust for admission arrangements for Freshwaters Primary Academy.

3. 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. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
 - a. the objection form received from the local authority dated 23 June 2014;
 - b. the minutes of the meeting on 26 November 2013 of the local advisory board at which it agreed to consult on the 2015 arrangements;
 - c. correspondence provided by the school concerning its consultation on the arrangements;
 - d. the response to the consultation on the arrangements by the local authority and another school;
 - e. the determined admission arrangements for 2015;
 - f. a map provided by the school showing the catchment area;
 - g. communications to the school received from parents and provided to me by the school;
 - h. the primary admissions booklets for Essex and west Essex for 2015; and
 - i. responses from the school and the local authority to my enquiries.
6. I held a meeting (the meeting) at the school on 18 July 2014 in order to clarify the arrangements and to understand the local context. This was attended by representatives of the school and the local authority.

The Objection

7. The objection is that the reduction of the published admission number for September 2015 from 40 to 30 is unfair, acts against parental preference and is an unreasonable action by the admission authority. The objector says that the school has the capacity to offer 40 places and there is a need for 40 places for 2015 and refers to paragraphs 12, 14, 1.3, 1.8 and 1.10 of the Code to support the objection.

Other Matters

8. In the course of considering the objection, I reviewed the arrangements as a whole. The arrangements appeared not to conform with the requirements relating to admissions in the following matters: the record of decision making by the school; the need to state that previously looked after children as well as looked after children have the highest priority for places in the description of the arrangements on the school's website; clarity with regard to sibling definition; specifically stating that the waiting list will be ranked again using the oversubscription criteria

when any child joins the list; and the need for a final tie-breaker.

Background

9. Freshwaters Primary Academy is an academy primary school situated in Harlow in Essex. Harlow is 30 miles from London with good transport links. At the meeting I was told that the town was increasingly popular with commuters and this is a factor in the demand for school places.
10. The predecessor school, Broadfields Primary School, was established in 1990. It converted to become an academy and was renamed Freshwaters Primary Academy on 1 September 2013 as a partner school in the Burnt Mill Academy Trust. The established admission number of 40 continued from the previous school.
11. The local authority produces pupil number projections for groups of schools within a specific locality in order to help it fulfil its duty to ensure that there is a school place for every child. There are 27 primary schools in Harlow. The school falls within what is described as the Harlow Group 3 forecast planning area. There are five primary schools in this group and they are in close proximity to each other; one, a community primary school, is about half a mile from the school in a direct line in one direction and another is about half a mile in the opposite direction.
12. The school and the local authority explained to me that there has been a sharp increase in the number of school places needed in Harlow. Until recently there were considerable numbers of surplus places in the school and in the area. The local authority said that demand for places has come from both an increased birth rate and inward migration and that an additional 200 places have been created in the Harlow area in the last five years.
13. The school's admission number was increased to 60 for 2013 for one year only. This was in response to what was thought to be a single bulge year. The local authority put an additional double re-locatable (or temporary) classroom on the school grounds to facilitate this. The demand for places has continued to increase and more swiftly than anticipated in previous forecasts.
14. The local authority has been discussing with schools in the area how to increase the number of places for children but, despite some increases, there is still a shortfall compared with anticipated demand. The local authority is discussing with the school an increase in its capacity so that its admission number could be increased permanently to 60. The school is keen for this to happen and investigations into how this can be achieved are in hand. It is likely that 2017 is the earliest that any new accommodation will be ready for the increased admission number.

Consideration of Factors

15. The Trust is the admission authority. The Trust had delegated authority for admission arrangements to the local advisory board for the school which held its first meeting on 26 November 2013. The minutes of that initial meeting record, *“The CEO (chief executive officer) reported that there had been a meeting with Essex County Council to co-ordinate the admissions number at Freshwaters with that of Cooks Spinney Primary School. The CEO informed the meeting that the discussions with the Local Authority were for Freshwaters to increase the Planned Admission Number (PAN) from 40 to 60 whilst Cooks Spinney would reduce their PAN from 70 to 60. The meeting noted that this would allow each school to become two-form entry schools and that this would reduce the need for mixed-age teaching. The CEO added that Freshwater would have to reduce its PAN to 30 unless the Local Authority agreed to fund the building of additional classrooms needed allow for an expansion of the school to accommodate a PAN of 60 per year.”* The school told me that the local advisory board decided to consult on reducing the admission number to 30 although its preferred option was an admission number of 60 once building work had taken place. The local advisory board agreed that if there were no commitment to a permanent admission number of 60 from the local authority then a sub-group of the headteacher and the chair of the local advisory board should determine the admission number at 30. This is not clear from reading the minutes of the meeting.
16. The school held its consultation between 18 December 2013 and 26 February 2014. The evidence shows that a thorough consultation process took place in terms of raising awareness and encouraging responses. The local authority responded to the consultation in detail and provided data on the anticipated demand for places and the basis for its belief that the school had capacity for around 340 places. The local authority concluded its response with, *“In summary the Local Authority believes that Freshwaters Academy has the available accommodation to sustain the published admissions number of 40 for 2015 and beyond and that to reduce the number to 30 will result in insufficient Reception places in this area of Harlow, unnecessary expenditure, and a reduction in parental preference.”*
17. The sub-group of the local advisory board (the headteacher and the chair) considered the consultation responses and determined the arrangements. Some changes were made to the arrangements based on feedback from another school. The school told me at the meeting that the local advisory board had discussed the reduction of the admission number in some detail at its meeting on the 26 November 2013 and it had been felt that the local authority response to the consultation had not changed anything so there was minimal discussion before the arrangements were determined. There are no minutes available for this meeting of the sub-group and its decision.

18. I consider that the relevant factors in considering the objection are: the capacity of the school; the need for places in the area and parental preference; and the school's reasons for reducing the admission number. I therefore consider these aspects below.
19. The local authority described the capacity of the school when it responded to the consultation held by the school as, "*The latest suitability survey for Broadfields Primary (the former name of Freshwaters Academy) shows the net capacity of the school as 280 with a minimum capacity of 262 and a maximum of 300. The current published admissions number (PAN) is 40 and has been set at this limit for some years. In addition to the permanent capacity of 280 the Local Authority (LA) provided the school with a double relocatable classroom in September 2013 to enable the school to take an additional 20 reception pupils due to pressure in the area. Therefore at the current time the LA believes the school to have a capacity of around 340 places.*"
20. If the school were to be full in all year groups with an admission number of 40 then the school would have 280 children. At the meeting the school anticipated 298 children in September 2014 because of the admission number of 60 in 2013 which was for one year only. If the school were to move to an admission number of 30 and be full in all year groups, the school would have 210 children. This would take seven years from September 2015 to achieve. From 2015 the school would have more space each year and thus more flexibility in how it used its space. On the basis of the local authority figures this would leave surplus capacity for 130 places by 2021, if the temporary double classroom were not removed. If the double temporary classroom were removed it would be a surplus capacity of 70 places by 2021. This means in the long term that the school would have a high level of unused capacity with an admission number of 30. In 2015, with an admission number of 30, there would be around 280 children with classroom space for around 340 children.
21. The school acknowledges that there is sufficient classroom space for an admission number of 40 but says that there is a lack of space outside of classrooms for the interventions needed for an effective school that really makes a difference to its children. The school says that education standards have been low since the school opened and that it strongly wished to improve standards. In its letter to the OSA in response to the objection dated 9 July 2014, the school said that,
- *"corridors are extremely narrow which could make them unsafe*
 - *the hall is too small to effectively have a whole school assembly or performance*
 - *the kitchen is too small to cater for the numbers suggested*
 - *lunchtimes have already been spread over 2 hours to accommodate the number of pupils the school currently has. This has resulted in the hall being out of use for PE lessons meaning pupils are losing out on their entitlement.*

- *the school library was closed and has been refurbished into 2 small group rooms. These are the only group rooms available. The low baseline our pupils arrive with means many of them need interventions in reading, writing, maths and social skills. Currently, pupils are on waiting lists for interventions because there isn't the space available.*
- *there is a large group of pupils who would benefit from a nurture group room. There is no capacity for this at the moment. A reduced PAN (published admission number) would allow for such essential provision and prevent permanent exclusions."*

22. The local authority agreed at the meeting that the hall was slightly under size but its previous survey had indicated no other problems. The school said it could fit in 300 "breathing" children but 210 would be the maximum to give the children the best learning opportunities. Classroom space has been used in a variety of ways over time including an ICT suite, library and sensory room. The school referred to teaching some year 6 classes at the sponsoring secondary school due to lack of suitable spaces. It described the limited internal space outside the classrooms as the major constraint with groups already taught in the staffroom and the reception area of the school leaving no preparation area for staff. The school said that the situation would become more problematical as the September 2014 reception group of 45 entered key stage two in 2017.
23. In summary there are 12 classrooms and approximately 298 children in the school. There is sufficient classroom space for around 340 children. An admission number of 30 in 2015 would reduce the number of children in the school to around 290 children.
24. The school said that changes in its intake increased the need for spaces outside of the classroom. The needs of the children are said to have changed considerably in the past few years which meant that additional help for children, and the space which it requires, was now more necessary than before. I was referred to the increase in the proportion of less advantaged children and those for whom English was an additional language. I therefore asked for further information on these matters.
25. Ofsted inspected the previous school in March 2010 and described the school as of broadly average size and intake. The school says that in 2010 the total number of children who spoke English as an additional language was 24 and 13 per cent. The comparable figures for 2014 are 74 and 23 per cent. This indicates a significant increase in the number and proportion of children with English as an additional language. Department for Education information on schools in England shows that 18.7 per cent of children attending state funded primary schools are known or believed to have a first language other than English. These figures show that the proportions in the school are above, but not far above, the national average. Simplistic figures such as these do not indicate what the level of need will be as a result and this can vary

considerably.

26. The levels of deprivation indicated by the proportion of children eligible for free school meals remain at similar levels at around 25 per cent. The national average for the proportion of children eligible for free school meals in primary schools is around 19 per cent so this is a little above the national average. The proportion of free school meals is also a simplistic indicator of need but the best that currently exists.

27. In summary the evidence shows an increase in the proportion and number of children who speak English as an additional language and that the proportion of less advantaged children has stayed broadly similar since 2010. These figures indicate that the needs of children attending the school are somewhat higher than national averages but the levels of need do not convince me that they justify reducing the number of places that the school provides.

28. I will now consider the need for places. In July 2014 the local authority provided me with figures forecasting the demand for reception places in the school as being 69 in 2015, 40 in 2016 and 73 in 2017. As other schools are so close it is necessary to look at the area forecast. The table below provides the forecast for the reception intake for the area covered by the five schools in the Harlow group three used by the local authority.

Year of admission	Total of admission numbers for schools in Harlow group 3 (excluding reduction by the school)	Forecast demand	Forecast gap (-) or surplus (+) (excluding reduction by the school)
2015 – 2016	260	289	-29
2016 – 2017	250	250	0
2017 - 2018	250	293	-43

29. The total of admission numbers reduced by ten from 260 to 250 for 2016 as another school had reduced its admission number from 70 to 60 and this had been agreed by the local authority. I asked the local authority about this and its response was, "*The Local Authority does not object to this reduction as the school has insufficient accommodation to keep having intakes of 70 pupils per year. Therefore it is a completely different situation to that at Freshwaters.*" The total of 260 admission places has been created recently by permanently increasing another neighbouring school from an admission number of 30 to 60.

30. For admissions in 2013 there were 132 preferences for the school with 42 first preferences. For admissions in 2014 there were 106 preferences for the school with 38 first preferences. The number of

first preferences for 2013 and 2014 were therefore around the current admission number of 40. The school received 58 children in September 2013 and 45 children in September 2014. These figures demonstrate that for 2015 there is likely to be parental demand for places at the school which cannot reasonably be met elsewhere.

31. I will now consider the school's reasons for reducing the admission number. The school explained the rationale for its decision to reduce the admission number from 40 to 30 as including:
- a. The lack of space outside of the classroom for intervention and other activities as discussed above.
 - b. The intakes of 40 make class organisation very difficult and raising standards harder.
 - c. Mixed-age classes tend to change every year affecting friendship groups and this is unpopular with children and parents. Some parents are said to have removed their children from the school because of this and the parent representatives on the local advisory board had been particularly vocal on the need for single age classes.
32. Each school makes its own decisions about how it uses the space available. I have considered the school's concerns about the space outside of the classrooms but it is my view that this perceived lack is insufficient reason by itself to reduce the admission number for 2015 when the demand for places is taken into consideration.
33. We discussed the effects of mixed-age classes at our meeting and, in its letter dated 9 July to the OSA in response to the objection, the school had described the challenges of mixed-age classes:
- *“mixed aged classes means mixing Reception with Year 1 and Year 2 with Year 3. This is unacceptable if we are to give the best education possible. Key stages and the EYFS (early years' foundation stage) are not designed to be mixed together. It means the right provision is withheld from pupils. The situation is very different in very small schools. Here, we have large groups of pupils who are not best placed taught with pupils in a different key stage.*
 - *mixed age classes means the school cannot run a curriculum because pupils change classes every year. This results in pupils repeating whole topics or missing out completely on topics. This should not be acceptable.*
 - *It is fair to have an excellent smaller school for existing and potential families and would be unfair to offer them a poor mixed year group school. This is supported by our recent KS2 SATs results. We achieved 83% level 4+ in reading, writing and maths and we had level 6s for the first time. These were the best results the school has ever seen; they are the product of a single year 6 class (every other year we have been forced to mix years 5 and 6).”*

34. The local authority supported the school by saying that an admission number of 40 was harder to manage than an admission number of 45, but also said that mixed-age classes are common in the local authority area with one school with such classes judged outstanding. This school may be in a more advantaged area. The school described how the new curriculum was designed to be taught in particular years and would make managing mixed years harder still. Year 4 was described as the most difficult aspect to manage in relation to mixed-age classes.
35. The school described the unpopularity of mixed-age classes with parents and children; it could provide little written evidence but said significant unhappiness was expressed in conversations. One letter was provided to me from a parent who described the family's concerns and made helpful suggestions about reducing the problems children face.
36. In its objection the local authority refers to paragraphs 12, 14 and 1.8 of the Code in relation to the requirement for fairness. A similar argument is made by the local authority with regard to paragraph 1.10 which says that it is for admission authorities to decide oversubscription criteria depending on local circumstances. The school does not agree that the references to fairness or local circumstances in the Code are relevant when considering reducing the admission number and believes that they are being taken out of context.
37. The local authority also refers to paragraph 1.3 of the Code which establishes that it is not necessary to consult if the admission number stays the same or increases. The local authority argues, and the school disagrees, that "*Paragraph 1.3 refers to a strong presumption in favour of an increase to a PAN. Arguably, the school's reduction of the PAN is de facto a contravention of this.*" It is my understanding that reducing the admission number requires consultation because it reduces parental preference and may cause a shortage of places. This means that very strong arguments will be required to reduce the admission number where there is evidence of parental preference for places at the school and a need for places in the area. The local authority's conclusion is that, "*in terms of fairness – the result of the lower PAN (published admission number) would effectively mean refusing to offer available places and make effective use of public resources*".
38. I have considered all the points made by the school and do not doubt that it is more challenging for the school to manage mixed-age classes rather than single age classes. However, I am not convinced that the challenges of having mixed-age classes are sufficient to justify removing places when there is a known need for places and parental preference for the school, and there is the physical capacity to provide places for 40 children in September 2015.
39. Paragraph 12 of the Code is applicable here as it defines the purpose of the Code and this is to ensure that, "*all school places for maintained*

schools (excluding maintained special schools) and Academies are allocated and offered in an open and fair way." The school has places and by making them unavailable, when there is a need, is acting unfairly. I therefore agree with the objector that it is not fair or reasonable to reduce the admission number from 40 to 30 for 2015 in these circumstances.

Other matters

40. I looked at the arrangements as a whole and found that there appeared to be aspects that do not conform with the requirements of the Code and consider these matters below.
41. The Trust delegated responsibility for determining the arrangements to the local advisory board. The Trust remains the responsible body and needs to ensure that proper process is followed and that this is formally recorded and reported to the Trust. My concerns are that the record of the meeting when the arrangements were discussed on the 26 November 2013 did not adequately record that meeting or its decisions with regard to the arrangements; there was no minute from that meeting of further delegating responsibility for the determination of the arrangements to a sub-group; there is no record of the meeting of the sub-group and the consideration of the response to consultation; and there was no evidence of reports to the Trust on the responsibilities that it had delegated. I have accepted the school's assurances that the arrangements were properly determined. The school says it has undertaken a review of governance and is addressing these matters.
42. The Code at paragraph 1.7 states that admission authorities **must** give the highest priority to looked after children and previously looked after children. The arrangements do this within their oversubscription criteria as stated in the full policy. On the school's webpage however, "*Our Admissions Policy*" refers only to "*looked after children*." This is misleading, inconsistent and inaccurate.
43. The arrangements include criteria regarding siblings. The arrangements do not define what is meant by sibling but refer the reader to the local authority information for a definition. It is not sufficient for an admission authority to refer parents on in this way. Paragraph 1.11 of the Code states, "*Admission authorities **must** state clearly in their arrangements what they mean by 'sibling' (e.g. whether this includes step siblings, foster siblings, adopted siblings and other children living permanently at the same address or siblings who are former pupils of the school).*"
44. The arrangements describe the waiting list, that it will be held in the order of the over-subscription criteria and will be held until the end of the autumn term but do not specifically state, as required by the Code in paragraph 2.14 that "*each added child will require the list to be ranked again in line with the published oversubscription criteria.*"

45. Paragraph 1.8 of the Code states, “*Admission arrangements must include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.*” This can occur when two children live in flats, for example, so that the distance from the school is the same. There is not a final tie-breaker in the arrangements and this is required.

Conclusion

46. The school has the capacity for its long standing admission number of 40 in 2015. There is evidence of parental preference for the school and the need for places in 2015. In light of these factors I conclude that the school’s reasons for reducing the admission number from 40 to 30 for 2015 are insufficient and therefore the determination of the lower number was unfair and unreasonable and I uphold the objection.

47. I have also considered the arrangements as a whole for admission to the school in September 2015 and have concluded that other aspects of the arrangements detailed above, do not comply with the Code. With regard to issues of non-compliance the Code requires the admission authority to revise its admission arrangements as quickly as possible.

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the arrangements determined by the Academy Trust for Freshwaters Primary Academy for admissions in 2015.

I have also considered the arrangements in accordance with section 88I(5) of the Act. I determine that there are other matters as set out in this determination that do not conform with the requirements relating to admission arrangements.

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 so that they conform to the Code.

Dated: 6 October 2014

Signed:

Schools Adjudicator: Deborah Pritchard