



## **DETERMINATION**

**Case reference:** ADA2744 and ADA2745

**Objectors:** The Medway Council, and the governing body of Brompton Academy

**Admission Authority:** The Fort Pitt Grammar School Academy Trust

**Date of decision:** 17 September 2014

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for The Robert Napier School determined by the Advisory Board of the school on behalf of the trustees of the Fort Pitt Grammar School Academy Trust.**

**I have also considered the arrangements in accordance with section 88I(5). I determine that they do not conform with the requirements relating to admission arrangements.**

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

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act), an objection has been referred to the adjudicator by Medway Council (the first objector), the local authority (the LA), in an email dated 26 June 2014, and also by the governing body of Brompton Academy (the second objector) in a letter dated 30 June 2014, concerning the admission arrangements for September 2015 (the arrangements) for The Robert Napier School (the school). Both objections are to the reduction in the school's published admission number (PAN).

### **Jurisdiction**

2. The terms of the academy agreement between the Fort Pitt Grammar School Academy Trust and the Secretary of State for Education require that the admission policy and arrangements for each academy school are in accordance with admissions law as it applies to maintained schools. The objectors submitted their objections to these determined arrangements on 26 and 30 June 2014. I am satisfied that the objections have been properly referred to me in accordance with section 88H of the Act and they are within

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

### **Procedure**

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
  - a. the first objection, from the LA, dated 26 June 2014, and supporting papers;
  - b. the LA's composite prospectus for 2015, 'Admission to secondary school' and map of schools;
  - c. the second objection, from the head teacher of Brompton Academy on behalf of the governing body, dated 30 June 2014, and supporting papers;
  - d. the school's determined arrangements for 2015/16;
  - e. the school's response to the objections, dated 11 July 2014, including papers relating to the consultation exercise and minutes of Advisory Board meetings;
  - f. notes of a meeting between the adjudicator and the parties to the objection, held at the school on 9 September 2014; and
  - g. the school's website.

### **The Objection**

5. The LA and the governing body of a neighbouring school, Brompton Academy, have objected to the school's reduction of its PAN, from 210 to 150, in its arrangements for entry in September 2015. The first objector contends that the proposed reduction "*would prevent the local authority from meeting its statutory duty to offer a school place to every child that applies for one*" in contravention of paragraph 2.11 of the Code.

6. The LA's objection includes forecast numbers for children of secondary age requiring places within its schools and seeks to illustrate that the school's proposed reduction in PAN "*would cause a significant risk of pressure on non-selective school places in Medway*", referring also to the flexibility required to cater for "*unforeseen increases in the level of inward migration, which in recent years has exceeded forecasts.*" The LA further argues that, if upheld, the school's reduced PAN "*would result in a significant proportion of the school buildings being surplus to need and left empty at a time when the demographics in the area and the demand on places are forecasted [sic] to increase.*" Furthermore, the LA contends that "*As both schools in the Gillingham area operate a fair banding system ... the reduction in PAN would disadvantage children in the area, decreasing their opportunity to gain a place at a local school ...* ".

7. The LA's conclusion is that concerns raised during the consultation process were not given due consideration; however that, within the local context, it could accept a compromise in the reduction of the PAN to 180, which *"would ensure sufficient spaces in the short term to meet forecast needs, although forecasts show that a further increase would be required from September 2017."*

8. The second objector raises similar issues concerning the pressure on local school places, stating that the school which it represents, *"the only other non-selective school in Gillingham, is heavily oversubscribed and could not take any additional students."* This objector also draws attention to the academy trust's stated intention to set up a three form entry non-selective free school in the area, which *"seems like a waste of public resources when clearly the Robert Napier School can accommodate and successfully educate a larger cohort of students as it has been doing for decades."* This objector argues that data shared with schools by the LA *"[demonstrates] the need for additional school places in Gillingham in the next few years ... The LA will require schools to increase their PAN rather than reduce [it]."*

### **Other matters**

9. In the course of considering the objection I reviewed the arrangements as a whole and noted that there are several matters that are non-compliant with the Code. Reference to the use of a distance oversubscription criterion is not explained fully; this does not comply with paragraph 14 of the Introduction to the Code, insofar as it fails to make it easy for parents to understand how places will be allocated. Within the arrangements there is a final tie-breaker to decide between two applications that cannot otherwise be separated, as required by paragraph 1.8 of the Code; however, the nominated method, *"random selection within bands"* does not make clear how this procedure will work, as required by paragraphs 1.34 and 1.35 of the Code. Information about waiting lists does not make clear that each additional name will cause the list to be re-ranked, as required by the Code in paragraph 2.14.

10. The sixth form arrangements do not explain how to apply for a place; the prospectus on the school's website mentions an *"expression of interest form"*, but I was unable to locate this as part of the published arrangements. Previously looked after children are not mentioned as having priority in the arrangements for admission alongside looked after children. There is no final tie-breaker. The concluding statement, *"The trustees may, in exceptional circumstances, refuse admission to any individual student if, in their view, to admit that student would prejudice the fulfilment of the school aims or seriously disrupt the provision of effective education of other students"* is unclear about what those circumstances might be, and so does not comply with the Code's requirement that arrangements should be *"fair, clear and objective"* as required by paragraph 14 in the Introduction. If this statement implies that admission to the sixth form could be dependent upon satisfactory reports of *"behaviour, attendance, attitude or achievement"*, then this also contravenes paragraph 1.9g) of the Code.

## Background

11. The school, a co-educational humanities college for pupils aged 11-18, became an academy as part of the Fort Pitt Grammar School Academy Trust in September 2012. There are currently about 1200 pupils on roll, including more than 150 in the sixth form. The school was last inspected in September 2009, when it was judged satisfactory overall but with good capacity for sustained improvement. Many of the buildings date from the 1930s and rooms are smaller, and corridors narrower, than in many more modern buildings; other parts of the premises are nearing the expiry date of planning permission. The sale of an off-site building recently allowed the provision of one modern teaching block.

12. The school uses a fair banding test to secure a balanced, all-ability intake, using tests devised by the National Foundation for Educational Research and the national profile to split applicants into five equally sized bands.

13. The arrangements for 2015 were determined by the advisory board of the school, as delegated representatives of the academy trust, which is the admission authority for the school, on 6 February 2014. This followed a consultation that was initially set to run from 9 October 2013 to 31 December 2013. The LA pointed out to the school that this period did not comply with the dates required by paragraph 1.43 of the Code. The school acknowledged this error and changed the dates of the consultation so that it ran from 1 November 2013 to 24 January 2014. Four objections to the consultation, in relation to the proposed reduction in the PAN, were received by post and one by email.

14. The determined arrangements for 2015/16 give a PAN of 150, that is, a reduction of 60 places from the previous arrangements since the school became an academy. Before the school converted to an academy, the PAN was 240; the proposed further reduction for September 2015 would thus have seen a reduction of 90 places, or more than a third of the pre-academy PAN, since September 2011. The arrangements for 2015/16 provide that children with a statement of special educational need in which the school is named will be admitted. Applicants are then placed into one of five bands as explained above. Within each band, places are offered first to looked after or previously looked after children, and then to those with statements. Oversubscription criteria for entry into year 7 are then, in summary, as published on the school's website:

- a. Children in public care, or previously looked after children
- b. Children with sibling(s) in attendance at the time of admission
- c. Children of a member of staff working in the Academy for 3 or more years at the time of application for admission and/or appointed to a skill shortage subject
- d. Nearness of children's homes
- e. Random selection within bands

15. Criterion a could be misleading as looked after and previously looked after children must be admitted whether or not they sit the banding test. If

such children do take the test, then they must have top priority in each band. Similarly, and before any oversubscription criteria are applied, children with a statement of special educational need that names the school must be admitted irrespective of whether they take the test or not. Criterion b is explained in detail in the arrangements; the method used in applying criterion d is not specified.

16. In the most recent admission years of 2013 and 2014, 161 and 187 places respectively were allocated for year 7 pupils on offer day; in 2013 there had been 428 total preferences expressed for the school and in 2014, 373 total preferences, of which 73 were first preferences. In these two years, places were not allocated up to the PAN of 210 that was set in previous arrangements. The most recent pupil census data, however, show year groups in the school varying in size from just over 160 to over 240, the three largest being in the current years 9-11 and the smallest by far in the current year 7. Given this, and the number of places allocated in recent years, the overall school roll is likely to see a fall in numbers over the next few years, although LA forecasts suggest that, across the LA as a whole, there will be a shortfall of available places for year 7 admissions by September 2019 even if all schools were to maintain the PANs applicable to September 2014 admissions.

### **Consideration of Factors**

17. I have considered carefully the reasons given by the objectors and the school's responses, both in writing and in person at the meeting I held at the school with the parties to this objection. I accept that the school does not benefit from the modern premises enjoyed by several of its neighbours in the LA and that the site does not make the movement of large numbers of pupils easy. It is also reasonable for the school to say that the size and layout of some rooms does not make them ideal for teaching and learning for large groups of pupils. However, there is no compelling evidence to suggest that these limitations have had a negative effect on standards in the school, and many other schools across the country are in a similar situation. It is unfortunate for this school that others are seen to have been provided with much better facilities, but again that is the case in many LAs and does not of itself mean that pupils' enjoyment of school, or their achievement, is necessarily compromised. The second objector, who knows the school through previous collaborative ventures at sixth form level, agrees that the previous PAN of 240 was too large, given the nature of the site and buildings but does not believe that the reduced PAN of 210 had caused any fall in pupils' achievements. I would agree that, all other factors being equal, a reduced number of pupils in the school would undoubtedly make for a pleasanter, and more easily managed, environment and during the meeting held at the school, the head teacher and chair of the advisory board argued this case strongly and convincingly. The issue is one of balancing the school's wishes against the LA's need, and indeed its statutory duty, to provide sufficient school places.

18. I must therefore consider what the 'other factors' I mentioned above might be. Specifically, both objectors are concerned about the effect that a further reduction in this school's PAN would have on the availability and

allocation of places, not only within the local area of Gillingham, where the second objector's school is also situated, but more broadly across the LA as a whole. Data produced by the LA show that by the time of the admission round of 2017/18, assuming all secondary schools maintained their 2014/15 PANs, there would be severe pressure on places for year 7 pupils, with less than the five per cent spare capacity that it feels to be the minimum necessary, and that by 2019/20, there are likely to be more applicants than available places. Were the school to reduce its PAN by 60 places to 150, the actual shortfall of places across the LA could occur as early as 2017/18. Forecasts are just that, and have no absolute certainty, especially in an area where there are often considerable and unpredictable movements of school-age children in and out of the LA, but the figures suggest at the very least that a potentially serious situation concerning the provision of places for applicants to year 7 might arise within a few years

19. The second objector expressed a particular concern that *"if [the school] were to reduce its PAN to 150 this would give local children greater distances to travel to find a suitable local school with vacant places"*, reflecting my earlier point that this is a local as well as an LA wide issue.

20. I have acknowledged, in response to comments made by and on behalf of the school, that forecast numbers are not always accurate and that the picture within one area of a LA may be quite different from the overall situation, for example in the relationship between demand and available places. In its response to the objection, the school drew attention to the academy trust's proposal to open a free school in the locality, with capacity for 90 pupils. The advisory board discussed this at the meeting which considered the consultation on the proposed new arrangements; the minutes record that the proposed free school *"would cover the shortfall created by the reduction in the PAN and alleviate the pressure Medway might be under with the reduced spaces."* However, the free school proposal is currently on hold and in my view is not germane to the outcome of this determination. The second objector expressed concerns about the potential nature of the intake for the free school and about the effect this might therefore have on other schools but again I do not judge this to be a contributory factor in my determination, in which I must consider the current situation, and forecast pupil numbers based on past experience, rather than plans for the future which, as yet, have no physical substance.

21. The school made a positive response to the concerns raised by the LA during the period of consultation on its proposed arrangements for 2015/16 when, in submitting its determined arrangements, the head teacher wrote *"I have been instructed to let you know that, should it be required for Sept 2015, we are prepared to take an additional 30 students. This would be with a PAN of 150, and the thirty being in addition to the pupil admission number."* The LA's comment on this, in the objection, was that *"Medway welcomes the commitment from [the school] with regard to admitting 30 pupils above PAN in the case of pressure on places. It is the Council's view that if the school were to determine a PAN of 180 for 2015, this would be an acceptable compromise."*

22. Following constructive discussion at the meeting I held with the parties to the objection, the head teacher and chair of the advisory board of the school agreed to accept a PAN of 180 for September 2015. The school and LA undertook to maintain appropriate contact regarding forecast pupil numbers and the implications for the school's PAN in the future within the overall LA context. I must emphasise the importance of this agreement being honoured by both the school and the LA in order to provide effectively for future needs locally and across the LA as a whole.

23. I determine, therefore, that the school's proposed PAN of 150 would have the potential to prevent the LA from meeting its statutory duty to offer a school place to every child and so I uphold the objection. I note, however, that the school and LA have agreed a compromise for the short term that is acceptable to all parties, in nominating a PAN of 180 for September 2015.

### **Other matters**

24. I turn now to the other matters mentioned above. Reference to the use of a distance oversubscription criterion in the arrangements does not detail the method used, nor is there a definition of the points between which the measurement is taken. This does not comply with paragraph 14 of the Introduction to the Code, which states that *"Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated"*; nor does it meet the requirements of the same paragraph, and of paragraph 1.8, for clarity and transparency. The arrangements provide a final tie-breaker to decide between two applications that cannot otherwise be separated, as required by the Code in paragraph 1.8; however, the nominated method, *"random selection within bands"*, does not make clear how this random selection will be made or that it will be supervised by someone independent of the school, as required by paragraphs 1.34 and 1.35 of the Code. Information about waiting lists does not make clear that each additional name will cause the list to be re-ranked, a requirement of paragraph 2.14 in the Code.

25. The sixth form arrangements do not make clear how to apply for a place; the prospectus on the school's website mentions an *"expression of interest form"*, but I was unable to locate this as part of the published arrangements. The form was explained to me at my meeting with the school, and is compliant with the Code, but as part of the admission process it should be published with the other documents pertaining to admission arrangements. Previously looked after children are not mentioned as having priority in the arrangements for admission to the sixth form, but only looked after children. There is no final tie-breaker in the sixth form arrangements as required by paragraph 1.8 of the Code. The statement, *"The trustees may, in exceptional circumstances, refuse admission to any individual student if, in their view, to admit that student would prejudice the fulfilment of the school aims or seriously disrupt the provision of effective education of other students"* is unclear about what those circumstances might be, and so does not comply with the Code's requirement that arrangements should be *"fair, clear and objective"* (paragraph 14 in the Introduction). If this statement implies that admission to the sixth form could be dependent upon satisfactory reports from

previous schools of an applicant's "*behaviour, attendance, attitude or achievement*", then this contravenes paragraph 1.9g) of the Code. I suggest that the statement is removed forthwith.

26. The school will need to check the wording of its arrangements for entry to other years to ensure consistency with the arrangements for entry to the "relevant age groups", that is, years 7 and 12, to enable parents to understand easily and clearly what criteria are applied, and how for in-year admissions to other year groups.

## **Conclusion**

27. The objections draw attention to what they believe is an unreasonable reduction in the school's PAN for September 2015 from 210 to 150, which is likely to contribute to future problems for the LA in providing sufficient overall places for year 7 applications, and with potential serious impact within one area of the LA. I found that the school had previously reduced its PAN from 240 to 210 and that, although the site and buildings are far from ideal, there has not been an apparent downturn in pupils' achievement in recent years while accommodating this number. I agree that the proposed further reduction would cause potential difficulties for the LA in providing places across the authority as a whole as well as in the immediate area of the school.

28. I therefore uphold the objection to the reduction of the PAN to 150. However, during a meeting I held with the parties, a compromise was reached whereby the PAN for September 2015 will be set at 180. This outcome was agreed as acceptable by all parties to the objection. The school and the LA have undertaken to engage in further constructive discussions about setting future PANs as forecast pupil numbers are refined. I note the school's commitment to increase the PAN again as necessary, following such consultations. It will wish to honour this agreement, as there would not be a mechanism for a further objection should the school decline to increase its PAN in the future.

29. In considering the school's arrangements as a whole, I found that they contained a number of inconsistencies and some omissions in relation to the requirements of the Code, which could confuse or mislead applicants. These included the application of a distance criterion and the use of a tie-breaker. There was no explanation of the effect on the rank order of adding children's names to a waiting list. The sixth form arrangements replicated some of these issues, omitted reference to previously looked after children, and included an unacceptable statement about refusing admission to some applicants on vague and possibly non-compliant grounds.

30. There are inconsistencies between the arrangements for admitting children to years 7 and 12, and those relating to in-year admissions. The school noted these shortcomings when drawn to their attention in the meeting and has agreed to amend the arrangements forthwith so that they comply fully with the Code.



## **Determination**

31. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for The Robert Napier School as determined by the Advisory Board of the school on behalf of the trustees of the Fort Pitt Grammar School Academy Trust.

32. I have also considered the arrangements in accordance with section 88I(5). I determine that they do not conform with the requirements relating to admission arrangements.

33. By virtue of section 88K(2) 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 September 2014

Signed:

Schools Adjudicator: Andrew Bennett