

## **DETERMINATION**

**Case reference:** VAR/ 000505

**Admission Authority:** The Governors of Firth Park Community Arts College, Sheffield

**Date of decision:** 16 May 2011

### **Determination:**

**In accordance with section 88E of the School Standards and Framework Act 1998, I reject the variation to the admission arrangements determined by the Governors of Firth Park Community Arts College, Sheffield**

**I determine that for admissions in September 2011 the School's admission number shall remain at 273.**

### **The referral**

1. The Governing Body of Firth Park Community Arts College, Sheffield, a Foundation (Trust) School for pupils ages 11-16, has referred to the Adjudicator a variation request concerning its admission arrangements for September 2011. The School wishes to reduce the published admission number from 273 to 210.

### **Jurisdiction**

2. The referral was made to me in accordance with section 88E of the School Standards and Framework Act 1998 (the Act) which states that:

“where an admission authority (a) have in accordance with section 88C determined the admission arrangements which are to apply for a particular school year, but (b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined, the authority must [except in a case where the authority's proposed variations fall within any description of variations prescribed for the purposes of this section] (a) refer their proposed variations to the adjudicator, and (b) notify the appropriate bodies of the proposed variations”.

3. I am satisfied that the proposed variation is within my jurisdiction.

### **Procedure**

4. In considering this matter I have had regard to all relevant legislation, guidance and the School Admissions Code.

5. The documents I have considered in reaching my decision include:
- the Chair of Governors' e-mail of referral of 6 April 2011 and supporting documents;
  - the determined arrangements for 2011/2012 and the proposed variation to those arrangements;
  - a copy of the Council's booklet for parents seeking admission to schools in the area in September 2011/2012 ;
  - a map showing the location of nearby schools;
  - the contents of correspondence with Sheffield City Council acting on behalf of the School.

### **Background and consideration of factors**

6. The School's published admission number for September 2011 is currently 273, and was set having regard to its net capacity assessment which shows a minimum of 1269 and a maximum of 1410 available workspaces, and a net capacity of 1365. This gives an indicated admission number of 273.

7. The School has stated that a major change in circumstances has resulted from there being significantly fewer pupils than had been anticipated who have been allocated places at the school for September 2011 (189 when the request was submitted). The School believes that limiting admissions to a maximum of 210 will enable it to deliver the "best and most efficient" provision for students.

8. The information supplied by the School in making this request shows that there had been 186 first preferences for the school, but 357 applications overall for places in September 2011. Figures for previous years show a steady decline in applications for places at the School since 2006/7. No appeals against refusal of a place have been heard since the September 2008 admissions, which was the last time the admission number was reached. The School believes that the combined effect of lower cohort numbers in the City and recently increased provision at nearby schools has resulted in admission figures which were even lower than expected for September 2011.

9. Following my request for further information, I have been told by the Council, on behalf of the Governors, that

- (i) no changes have been made to the accommodation at the School, and that its net capacity assessment remains unaltered;
- (ii) the admission arrangements recently determined for September 2012 include an admission number of 273, but that if by February 2012 the number of admissions appears again to be considerably below this figure, a variation will again be requested;
- (iii) pupil forecasts show that Firth Park Community Arts College is

expected to have 273 admissions from September 2015 onwards, and that the number of available Year 7 places at the local group of four secondary schools of which it is a member will be insufficient to meet demand by September 2017; and that

- (iv) the School wishes to limit the possibility of any unexpected admissions beyond 210 taking place because this may lead to there being additional numbers which were insufficient to create a further form of entry. The School wishes to be able to plan the curriculum and to manage the School's available resources free of such a concern. It is aware that there are vacancies at other local schools should they be needed.

10. The School Admissions Regulations and the Code set out how the admission number for a school should be arrived at, and if necessary the limited circumstances in which it can be varied. In essence,

- the admission authority must have regard to the school's indicated admission number (derived from the capacity assessment) when setting the admission number (The School Admissions (Admission Arrangements)(England) Regulations 2008, Regulation 4);
- the admission number can be lower than that indicated by the capacity assessment if the admission authority publishes this information for parents at the same time as it consults the relevant bodies on its proposed admission arrangements (Code, 1.17);
- the admission number can be higher than that indicated by the capacity assessment (Code, 1.17).

11. In other words, there is a specific intention that a school's admission number should be linked to the physical capacity of its buildings. There are a number of reasons why this needs to be the case and why this is therefore a position established by the regulatory framework. Importantly, it allows the local authority to have at its disposal a means for carrying out its statutory role of ensuring sufficient places, whilst also managing the level of any surplus to a minimum, by the creation or removal of physical capacity within the system of schools. Equally, for the individual child, for parents and for schools, it also means that, on the one hand, children cannot be provided with education without appropriate accommodation being available and, on the other, that if accommodation is available then children needing a school place cannot be denied one.

12. In practice therefore, the definition and maintenance of a standard relationship between the physical capacity of schools' buildings and the number of children for whom each provides education is an intentional and necessary cornerstone of the efficient management of the provision of education. While it is not a relationship cast in stone, neither is it a feature that can be manipulated at will.

13. The pattern of recent admissions at Firth Park and its neighbouring schools indicates that it has suffered to a greater extent than other schools locally - certainly in 2011/12 - from the falling cohort sizes in the City. It has surplus capacity and more than other local schools at year 7, but is not alone in this respect.

14. Were the local authority to have considered it appropriate in terms of its need to manage the level of surplus places in the area, it would have been possible for it to have taken steps to reduce the capacity of Firth Park, or possibly that at other local schools, even if on a temporary basis, given that there is in the longer term a projected shortfall in school places. This has not happened, and I can only conclude that the Council does not consider this necessary and is happy with the overall level of provision. It would also have been possible to consult on an admission number lower than that indicated by the capacity assessment at the time the admission arrangements for 2012 were determined. This, too, has not happened.

15. The requested variation is a response to the situation which this inactivity has created. The School will now have, for the next few years, significant surplus capacity in each year group entering the school, if nothing changes. The question which I need to consider is whether that response (the requested variation) is a relevant or appropriate one to this set of circumstances.

16. The School have stated, via the Council, in response to my request for a fuller explanation of the reason for the requested variation, that it intends to organise on the basis of seven forms of entry and to attempt to restrict admissions to 210. To allow the possibility of 273 admissions would "compromise the degree of personalisation the school offers its students, resulting in impractically excessive class sizes and a strain on both physical and human resources", in its view. It goes on to say that "if the admission number were to remain at 273, the concern is that in-year demand may give rise to numbers above 210 but not sufficient to justify another form of entry".

17. While that may be true, this situation pertains at any school, at any time, since in the first place even admissions made in the normal admission round are never capped at the admission number, but can be exceeded as a result of successful appeals against refused admissions or to meet excessive demand. Admissions outside the normal admission round can of course occur at any time. All schools have to manage the situation created by their level of actual admissions in terms of the organisation of teaching groups and consequential timetabling and staffing requirements, and a particular admission number provides no impermeable barrier to ensure that admissions are capped at a convenient level.

18. An admission number of 210 for Firth Park would not provide it with the protection from admissions beyond that number that it seems to imagine, especially since the School's physical capacity has not been reduced, providing grounds for potentially successful appeals should there prove to be a demand for places above this number. Other local schools are not fully subscribed and so may, like Firth Park, make further admissions. Eventually pupil numbers might just as plausibly take them beyond their admission

numbers, although the information which I have been given does not indicate that there are sufficient pupils needing places to make that likely either for them or, for that matter, for Firth Park, certainly in the current year 7 cohort.

19. As for future in-year admissions, it is true that with an admission number of 273 the year groups passing through the School from September 2011 and for some years will, on the basis of the current information, have significant numbers of vacancies. Any school for which this is the case may feel itself potentially open to being asked over the course of time to admit more than its fair share of children who are seen as vulnerable or who have a recent history of challenging behaviour - although if this is so, Firth Park have not expressed that view. In any case, such issues should be managed through the Council's Fair Access Protocol which must ensure that this does not happen (Code 3.43).

## **Conclusion**

20. The determination of a school's admission number is a key part of the arrangements set out in the Code which are designed to enable parents in particular to understand where school places are available and what the likelihood is of them securing a place at any particular school for their child. As such, it is the intention of the provisions which relate to it in the Code and elsewhere that an admission number is established in normal circumstances on the basis of the available accommodation, and well in advance of the admissions process itself. Where an admission authority intends not to use the accommodation available to it to the fullest possible extent to provide school places, it can do so, but only if sets out its intention when consulting on its proposed arrangements 18 months before they come into effect (see paragraph 10 above and the Code, paragraph 1.26). There has been a steady decline in pupil numbers since 2006/7, so the decline in pupil numbers is not unexpected and the determined admission number for 2012 admissions could have taken account of this.

21. By contrast with these arrangements, in which admissions follow after the process of determining admission numbers, I am asked here to agree a variation to an admission number following the outcome of the admission process - and based on that outcome - but where I am told that neither have steps been taken to reduce the physical capacity of the school (which could as a temporary measure have been an appropriate response to what seems to be a general and sufficiently sustained decline in the local demand for school places), nor has the admission authority itself taken the steps which are available to it to lower the admission number below that indicated by the available accommodation for September 2012 (as it might have done). In other words, the capacity of the School remains the same.

22. I am left with the view that the variation process under section 88E(1) of the SSFA is not the appropriate mechanism for amending a school's admission number as a post-hoc means for facilitating the admittedly difficult business of managing the delivery of education to somewhat uncertain numbers of children, when other more appropriate means exist. I am confirmed in that view by the knowledge that the School intends to submit a further such request in February 2012 should there be a repeat of the same

“unexpected event affecting the provision of education at the school“ (Code 4.25). Not only am I not convinced that such a change would or could have the effect which the School expects (see paragraph 17 above), but I see no justification for the wider considerations which give rise to the need for there to be integrity in the determination of admission numbers across schools being set aside in this case. It seems to me to be neither sufficiently relevant nor appropriate.

23. Should they choose to use them, other means are however available to the different parties (the School and the Council) for responding to those manageable aspects of the circumstances of the School between the present time and the point where admissions are expected to result in it having no surplus places. I am of the view that such means would be the appropriate ones to pursue, and that a variation in the School’s admission number of the sort which has been requested is not. I so determine.

24. I would hope that the School will now give further consideration to its stated intention to submit a further variation request in February 2012 based on its anticipated level of actual admissions for September 2012, and that this determination will be used by it and the Council to plan a more appropriate course for the School in the period until it is again likely to be fully subscribed.

### **Determination**

25. In accordance with section 88E of the School Standards and Framework Act 1998, I reject the variation to the admission arrangements determined by the Governors of Firth Park Community Arts College, Sheffield

26. I determine that for admissions in September 2011 the School’s admission number shall remain at 273.

Dated: 16 May 2011

Signed:

Schools Adjudicator: Dr Bryan Slater