



Office of  
the Schools  
Adjudicator

## DETERMINATION

**Case reference:** ADA2848 and ADA2934

**Objector:** A parent and a member of the public

**Admission Authority:** The Hertfordshire and Essex High School Trust

**Date of decision:** 1 September 2015

### Determination

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objections to the admission arrangements for admissions in September 2016 determined by the governing body of the Hertfordshire and Essex High School and Science College in Bishop's Stortford, Hertfordshire.**

### The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), two objections have been referred to the adjudicator by a parent and by a member of the public (the objectors), about the admission arrangements (the arrangements) for the Hertfordshire and Essex High School and Science College (the school), an academy school for girls aged 11 – 18 in Hertfordshire, for September 2016. The local authority (LA) for the area is Hertfordshire County Council. The first objection concerns the admission arrangements of this single sex school for girls and the fact that a boy attending High Wych Primary School could gain a place at the single sex school for boys in Bishop's Stortford but a girl attending the same primary school is unlikely to gain a place at this school for girls in Bishop's Stortford. The second objection concerns the grouping of the feeder primary schools and asks whether their selection is transparent and on reasonable grounds.

### Jurisdiction

2. The terms of the funding agreement between the academy trust, in this case the Hertfordshire and Essex High School 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 on 24 March 2015 by the governing

body of the Hertfordshire and Essex High School and Science College, on behalf of the academy trust which is the admission authority for the school, on that basis.

3. The objectors submitted the objections to these determined arrangements on 19 April 2015 and 29 June 2015. The second objector has asked to remain anonymous but, as required by Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012, has provided their name and address to the Office of the Schools Adjudicator. 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. 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 objectors' forms of objection and subsequent comments;
  - b. the school's responses to the objections, supporting documents and subsequent comments;
  - c. the LA's comments on the objections;
  - d. the LA's composite prospectus for parents seeking admission to schools in the area in September 2015;
  - e. maps of the area identifying relevant schools;
  - f. the minutes of the meeting of the school's governing body held on 24 March 2015 when the governing body determined the arrangements; and
  - g. the determined arrangements for 2016.

### **The Objections**

6. The first objection concerns the admission arrangements of this single sex school for girls and the fact that a boy attending High Wych Primary School can gain a place at the single sex school for boys in Bishop's Stortford but a girl attending the same primary school is unlikely to gain a place at the school for girls in Bishop's Stortford. The objector also believes that the LA is failing in its duty to ensure that the schools within its area and for whom it publishes an admissions prospectus are operating in accordance with the Code with regards to gender equality.

7. The second objection concerns the groupings of the primary schools named in the arrangements. The objector considers that they do not comply with the requirement within paragraph 1.15 of the Code which says that “*The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds*”. The objector is concerned that a newcomer to the area will find the arrangements difficult to understand and that although the school says that the groups of schools are based on distance, some of the schools in the outer groups appear to be closer to the school than schools in the inner groups.

## **Background**

8. The school is an 11 – 18 school for girls with a co-educational sixth form. The school became an academy in April 2014 and has a published admission number (PAN) of 160 for Year 7 (Y7) and a PAN of 70 for the sixth form in Year 12 (Y12). The school has specialisms for music and sport and priority for 10 per cent of the places available in Y7 are given on this basis. The overall capacity of the school set out in the funding agreement is 1042 and includes 350 places in the sixth form. The school is located in Bishop’s Stortford.
9. The school is one of two single sex secondary schools in the area. The other single sex school is also an academy and admits boys. It has a PAN of 156 at Y7 and a co-educational sixth form with a PAN of 45 at Y12. It is also located in Bishop’s Stortford and is a little more than a mile distant from the school for girls.
10. The school for girls has been oversubscribed in recent years and allocates places using its oversubscription criteria. Ten per cent of the places (16) are allocated on the basis of aptitude with eight places available for music and eight places available for sport. The oversubscription criteria for the school give priority to:
  1. looked after and previously looked after children;
  2. girls with a sibling at the school;
  3. daughters of staff at the school who meet the criteria set out in the arrangements;
  4. then, of the remaining places, 87 per cent are allocated to four groups of schools in proportion to the number of applicants attending schools in each of the four groups and the places are then allocated within each group on the basis of straight line distance from the school:
    - a) All Saints School, Richard Whittington School, St Joseph’s School, St Michael’s School, Summercroft School, Thorley Hill School and Thorn Grove School
    - b) Hillmead School, Manor Fields School, Northgate School and

Windhill School

c) Little Hallingbury School and Spellbrook School

d) Albury School, Furneux Pelham School, Little Hadham School and St Andrew's School (Much Hadham).

5. The remaining 13 per cent of places are allocated to girls who live closest to the school by straight line distance.

11. The admission arrangements for the boys' school are similar in structure but use a different list of schools within the school's oversubscription criteria.

### **Other matters**

12. Paragraph 1.9(b) of the Code says that an admission authority "**must** not take account of any previous schools attended unless it is a feeder school". The school was asked to comment about the schools that it named in its arrangements.

13. The arrangements contain a statement about "*expecting parents to support the school's high moral code, strong discipline and high expectations*" and the school was asked to comment on this and whether it complies with paragraph 1.9(a) of the Code that says that admission authorities "**must not place any conditions on applications**".

### **Consideration of Factors**

14. The main point made by the first objector is that the school for girls and the school for boys appear to serve the same area and the same community but their admission arrangements are slightly different and that the arrangements do not provide the same opportunity for girls and boys within the area. The objector argues that the LA should co-ordinate the two sets of admission arrangements and ensure that they are kept the same. The objector is particularly concerned that High Wych Primary School is listed in the boys' school arrangements but is not listed in the arrangements for the girls' school. The objector concludes that the girls from that school do not have an equal opportunity compared with the boys for obtaining a place at a single sex school.

15. The governing body from High Wych Primary School wrote to the girls' school in 2013 to ask to be included in the list of schools in the oversubscription criterion but this request was rejected. The objector has more recently written to the school and asked the governing body to consider amending the arrangements to include the primary school but, after consideration, this request was also rejected by the governing body.

16. The school's response to the objection pointed out that in quoting paragraph 1.8 of the Code that states "*oversubscription criteria **must***

*be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation*", the objector appeared to be focussing on the last point where the admissions authority must not discriminate on the grounds of sex, in line with the Equalities Act 2010. However, the school points out that there is no requirement within the Code for single sex schools in the same area to ensure the co-ordination of their arrangements. The school says that it had consulted widely on its arrangements as required by the Code and a challenge in terms of equalities legislation had never previously been raised.

17. The school says that the boys' school will have its own reasons for selecting and naming particular primary schools in its admission arrangements. The girls' school also has its own reasons for selecting the schools that it does as priority schools. The governing body has agreed that the schools that it names will fall into one of the following categories:
- i. a state primary school in the town of Bishop's Stortford;
  - ii. a state primary school in one of the Hertfordshire villages for which Bishop's Stortford provides the closest (or equidistant) secondary schools; or
  - iii. a state primary school for which the school is the closest secondary school.

In doing this the governing body believes that it meets the Code's requirement to be "*transparent and made on reasonable grounds*".

18. The school wrote to the objector in 2014, following consideration of her request for a change, to point out that if an additional school was added to the list of feeder schools, then it would be necessary to change the criteria for school inclusion and that it would then need to name other schools as well. If it did this, it would reduce the number of places available to Bishop's Stortford residents and residents of village schools for whom the Bishop's Stortford schools are the closest schools.
19. The objector responded by providing distances from some of the primary schools listed to other secondary schools and arguing that for three of the schools (Spellbrook, Much Hadham and Little Hallingbury), the distance to the girls' school is more than the distance to an alternative co-educational secondary school and that this gives the girls in these village schools a wider choice of schools to consider than the girls at High Wych Primary School for whom this is also the case.
20. The objector then argues that if the school is aiming to ensure that the girls who attend the schools listed or who live nearest to the school should have the greatest priority for single sex education then the girls who are not included in these criteria are being disadvantaged. The objector argues that the girls who live in the other villages have just as much right to a single sex education and that the arrangements are unfair and biased against these children from other villages. The

objector accepts that the schools in Bishop's Stortford may be short of places but does not consider that this is a reason to neglect the argument about equality for High Wych Primary School.

21. The objector draws attention to the school's response that there is no requirement within the Code for single sex schools to coordinate their admission arrangements and comments that the Code refers to the Equality Act 2010 and paragraph 7 on page 34 of the Code that says "*admission authorities are also subject to the Public Sector Equality Duty and therefore must have due regard to the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity, and foster good relations in relation to persons who share a protected characteristic and persons who do not share it.*" The objector comments that the Public Sector Equality Duty places more responsibility with service providers (and in this case schools) to think strategically about gender equality in respect of all their functions.
22. The objector rejects the school's suggestion that the last criterion that prioritises distance provides an alternative opportunity for girls who do not attend the named schools because High Wych Primary school is 4.7 miles from the girls' school and the figures that the school provided show that the greatest distance allocated by the school under the distance criterion in 2015 was 2.2 miles and in the last five years the greatest distance has been 4.2 miles. The objector points out that this gives no additional opportunity to a child living this far from the school and not attending a named school.
23. The LA responded to the comments made by the school and the objector and said that the difference between the admission arrangements for these schools was acceptable because they were autonomous schools and there was no requirement for a school or the LA to ensure compatibility in its admission arrangements with other schools. The LA said that it does not have the power to enforce collaboration between schools that are their own admission authorities. The LA acknowledged that there were some pairs of single sex schools in the authority that did work together on admissions and there were others that did not. In this case the schools did not collaborate on admissions. It went on to say that if the lists of schools or areas covered by the arrangements were aligned, one or both of the schools would need to change their arrangements and that if any change were made, some parents and their families would gain advantage and others would lose the opportunity for places and a review would not necessarily produce the outcome that this objector sought for High Wych Primary School.
24. The second objector raises the concern that the lists of schools are not transparent and that as a newcomer to the area it was very difficult to understand the arrangements. The school has not made it clear or transparent in the published arrangements how the groups are determined. The objector said that a query to the school in March 2015 received the reply that Group a) (see paragraph 10 for groups) were

the schools within Bishop's Stortford nearest to the school and Group b) were those further away. However, the objector said that Windhill School in Group b) is significantly nearer than at least one school in Group a) and is therefore wrongly grouped. St Joseph's school which is on the other side of the road and slightly nearer to Herts & Essex is in Group a). As a latecomer to Bishop's Stortford due to a work move, the objector's child was allocated the only available place in Year 3 at that time and not the school the objector would have chosen given their address. The objector said that the family did not have any information on catchment areas as in year applicants, nor can the objector find this information which would enable parents to make an informed decision on the feeder schools in the 2016 arrangements.

25. Given the lack of primary spaces in the area, the objector assumes that the primary schools admit the children nearest to them and that the admissions arrangements use the distance to the school. The objector is also not clear how Furneaux Pelham School falls within the feeder school grouping given the distance from Bishop's Stortford. A parent might reasonably expect to gain a place for a child living in Bishop's Stortford at 2000m away over a child at 6.7 miles away with 7 nearer schools.
26. The school responded that the 11 schools in groups a) and b) are divided into two, broadly an inner group of schools and an outer group of schools. Windhill School was included in the outer group because the community served by the school was predominantly to the south and west of the primary school. The communities served by other primary schools in group 4a are more likely to be in the centre of the area they serve.
27. The school said that the current groupings were established, following a review, for entry in 2014, and the school has not felt able to identify trends reliably since then because of the short time. The school reported that this issue was raised by a parent at the school's recent secondary transfer appeals, and was relayed to the student welfare committee of the governing body at its most recent meeting on 17 June 2015. The committee agreed and minuted that it would wait for three years of data to ascertain whether any Bishop's Stortford feeder school is disadvantaged under the current system and agreed that the matter would be discussed at the end of the 2016 academic year.
28. I have considered all the points set out above and also sought clarification from the school about the admission pattern into the school over the last five years. The school provided the data, which I have set out in the table below and will discuss later. I have referred to the appropriate paragraphs of the Code in coming to my conclusions.

Name of school	2011 applied	2011 places	2012 applied	2012 places	2013 applied	2013 places	2014 applied	2014 places	2015 applied	2015 places
Albury	4	2	4	1	2	1	1	1	3	3
All Saints	14	4	14	9	12	6	11	6	9	5
Furneaux Pelham	9	5	13	6	8	3	5	1	9	2

Hillmead	10	6	18	11	11	8	13	9	14	11
Little Hadham	7	4	8	4	3	2	5	4	4	3
Little Hallingbury	8	5	8	3	8	4	14	5	12	6
Manor Fields	23	16	29	17	23	12	30	17	23	8
Northgate	27	24	33	22	26	15	36	27	23	16
Spellbrook	5	3	6	4	7	2	8	2	3	3
St Andrew's	8	5	14	7	12	7	9	7	16	10
St Joseph's	15	4	13	0	31	12	18	7	23	9
St Michael's	13	12	13	5	14	6	19	12	13	7
Summercroft	21	12	22	13	29	15	20	13	25	16
Richard Whittington	22	8	20	12	19	9	19	9	18	4
Thorley Hill	8	7	13	7	18	8	12	8	11	7
Thorn Grove	14	8	13	5	16	12	15	9	18	8
Windhill	17	7	8	4	11	7	23	7	15	7
Totals	225	132	249	129	251	129	257	144	239	126

29. The first matter that I considered is whether or not it is necessary for the girls' and the boys' schools serving an area to coordinate their admissions in some way in order to ensure that both had, in effect, the same arrangements. The Code refers to the Equality Act and within it the limited exception to the prohibition of discrimination that allows single sex schools to discriminate on the grounds of sex in their admission arrangements.
30. The question about whether or not two schools such as the school which is the subject of this objection and its local boys' school should co-ordinate their arrangements is not specifically covered in the Code. The two schools are academies and their own admission authorities. Their funding agreements do not require them to have the same admissions arrangements as each other. In these circumstances, therefore, I am satisfied that the schools are able to act independently of each other and of the LA.
31. Attention has been drawn to the Public Sector Equality Duty (the Duty). The Duty requires public sector providers including schools to advance equality of opportunity. The school has gathered data and reviewed who it admits and how its admission arrangements operate and concluded that it has a set of arrangements that it believes are lawful. It intends to review the current arrangements when it has gathered data about how they have performed over the next three years. The Duty requires schools to gather evidence about equality matters and to keep matters under review and in doing this with its admissions arrangements the governing body is meeting this requirement.
32. The objector considers that the LA has a role in bringing together such discussions. However, by becoming academies, the schools have become independent of the LA and receive their funding directly from the government under the terms of their funding agreements. The LA is responsible for compiling and publishing a composite prospectus for



admissions and receives the admission arrangements from schools that are their own admission authorities for this purpose. The LA may comment on arrangements but the admission authority can decide how to respond to such comments made during a consultation period. The LA may also submit an objection to a school's arrangements to the adjudicator. Overall, however, the LA does not have the power to act as the objector suggests.

33. The second objection concerns the use of groups of named schools and asks if this is transparent and if the selection of such schools is made on reasonable grounds. The school is clear on the reason why it selects the primary schools. The school does not explicitly say so but from its responses to the objector it appears that groups a) and b) listed above in paragraph 10 correspond to group i) listed in paragraph 17, and then group c) corresponds to group ii) and then the last groups in the lists correspond. As a person who does not live in the area I found that it was not easy to understand the geography without the assistance of the map provided. However, the reasons given are transparent and I consider that they are made on reasonable grounds in that they are rational, explicit and I can see the logic in using them. The school's explanation for the apparent anomaly that the objector picks up is clearly explained and fits with the rationale for the selection of groups. I therefore consider that these groupings do meet the requirement to be transparent and to be made on reasonable grounds and I do not uphold this part of the objection. I found the provision of a map very helpful and suggest that the school might consider adding a suitable map to its website to assist applicants and their families.
34. Having considered the objections, I raised two other matters with the school. The first was whether the use of named schools is compliant with the Code. Paragraph 1.9b of the Code says that admission authorities "**must not take into account any previous schools attended, unless it is a named feeder school.**" The school names the schools but does not describe them as feeder schools. In this case the school names 17 primary schools within its arrangements.
35. The school has given three reasons for selecting these schools as named feeder schools and these are set out in paragraph 17 above. The school is a single sex school so it will have a larger geographical area than a co-educational school of equivalent size in an equivalent area of population density. As a single sex school, it will be a potential choice of school for around half of those leaving primary school and only for those who wish to attend a single sex school. Against this background, if it chooses to name feeder schools then this will mean that there are correspondingly more feeder schools than might otherwise be the case. I looked at the maps that show the geography of the area and observe that the school has selected schools that surround Bishop's Stortford. The school has explained how it uses the system of grouped feeder school in the arrangements, and using this system, the school is able to ensure that girls living further away do have some chance of gaining a place. I consider that the rationale for

this has a reasonable basis and that it is reasonable to use distance within the groups provided as a means of prioritising the applicants.

36. The schools are named and there is a reason for why they have been named, so in that respect the selection is transparent. Parents living in other villages served by a school that has not been named, as the objector does, may wish to argue that their village school should have been included but I am satisfied that the school has been transparent in setting out the schools that it has selected to include on its list. In doing so it complies with this requirement of the Code for the selection of feeder schools.
37. I have examined the pattern of allocated places set out in the table above. I observe that because the primary schools are placed in groups and then distance is used to prioritise applicants within a group, applicants from some feeder schools are more likely to gain places than from others and this will be linked to the primary school's geography within the group. It could be argued that this makes it difficult for the arrangements to be "*clear*" as required in paragraph 14 of the Code. I can see some merit in this argument. It could also be argued that this is unfair. However, because the school has explained that it wishes to spread the opportunity to gain a place more widely, I can see that this system, while complex and thus less easy to understand, does have the merit of achieving the stated objective. I do not consider that the arrangements are unfair but I do think that it is difficult for parents to be able to predict the likelihood of gaining a place. I acknowledge that this is not the same, however, as the provision that arrangements should "*be easy to understand*" in paragraph 14 of the Code.
38. I asked the school to help me to understand the relationship that it has with these schools. As a feeder school I would expect to see a greater relationship with these schools than with other schools. For example, there could be links to assist with transition to the secondary school or some curricular links.
39. The school explained that it is its policy to contact the feeder primary schools named in the admission arrangements in respect of information about admissions processes which might affect them. Fliers are distributed and visits by the school admissions officer are offered. The school also sends invitations to the families of all Year 5 girls in the named feeder primary schools, letting them know of opportunities for them to visit the school in the summer of each year to help them get an idea of what the school has to offer. Any direct school to school communication about the school's admission arrangements is made exclusively to the named feeder schools. The school went on to say that it has a programme of outreach work, which provides enrichment classes for primary age students predominantly, but not exclusively, to the named feeder primary schools. As a Teaching School and Maths Hub, the school's brief in these areas of outreach extends, of necessity, beyond the feeder schools. The school also explained that it had

extensive transition arrangements that are undertaken under the aegis of Catalyst, the Teaching School Alliance, working alongside other secondary schools in Bishop's Stortford and Sawbridgeworth.

40. I have considered the school's explanations of the relationship with the primary schools that it names. I am satisfied that it has been able to give an explanation that its relationship with these schools is more than simply named schools and therefore justifying their use as named feeder schools. As feeder schools I am satisfied that the school is transparent in explaining how they have been selected and gives the reasonable grounds for their selection.

41. I raised another matter with the school which was that the school includes a comment within its arrangements about "expecting parents to support the school's high moral code, strong discipline and high expectations" and the school was asked to comment on this and on whether it complies with paragraph 1.9(a) of the Code that says that admission authorities "**must not place any conditions on applications**". The school stated that although this was the expectation, there was no place for parents or students to sign up to this on an application form nor was there any assessment of this within the process used to allocate places. In this respect then, I am persuaded that the school is not placing any condition upon applications. However, the school could helpfully make this point clear within its arrangements.

## Conclusion

42. I have looked carefully at the submissions made by the objectors and the further comments from the school and other parties. I have concluded that I do not uphold the objections. My reasons for this are explained above and are on the basis that as an academy the school is an autonomous admissions authority. The school is a single sex school and permitted to discriminate on the grounds of sex, it is not required within its funding agreement to collaborate with any other schools whether single sex or co-educational. It has demonstrated that it reviews its admissions and is aware of, and performing, its responsibilities under the Equality Act.

43. The groups of named schools have been selected and the reasons for the selection are transparent and on reasonable grounds. I am satisfied that the school does more than simply name the schools and it has described the greater relationship that it has with the named schools than it has with other primary schools in the area and as such can justify describing the named schools as feeder primary schools and in doing so complies with paragraph 1.9b) of the Code.

44. I commented that that the arrangements are complex and difficult to understand, particularly if an applicant is new to the area, and it is difficult to predict whether an applicant will gain a place or not. This concern is balanced by the fact that the arrangements provide the opportunity for some applicants from the villages around Bishop's Stortford to gain a place, which they would not be able to do if distance

alone was the criterion used.

45. The school sets out its expectations of applicants and their parents or carers in the admission arrangements. I have concluded that this does not contravene the Code's requirement that the school must not place any conditions on applications because the school does not take this into account when allocating places.

### **Determination**

46. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for admissions in September 2016 determined by the governing body of the Hertfordshire and Essex High School and Science College in Bishop's Stortford, Hertfordshire.

Dated: 1 September 2015

Signed:

Schools Adjudicator: David Lennard Jones