



DETERMINATION

Case reference: ADA3459

Objector: Suffolk County Council

Admission Authority: Hartismere Family of Schools for Benjamin Britten Academy of Music and Mathematics

Date of decision: 23 July 2018

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2018 determined by Hartismere Family of Schools for Benjamin Britten Academy of Music and Mathematics, Lowestoft, Suffolk.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

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 within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I specify a deadline of two months from the date of the determination in relation to the naming of nine feeder schools and a deadline of 28 February 2019 in relation to priority given by random allocation among feeder school children and other matters.

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 Suffolk County Council (the objector), about the admission arrangements (the arrangements) for September 2019 for Benjamin Britten Academy of Music and Mathematics (the school), an academy school for pupils aged 11 to 16, which is part of Hartismere Family of Schools Multi-Academy Trust (the trust). The objection is to the number, location and selection of feeder schools.
2. The local authority for the area in which the school is located is Suffolk County Council, which is the objector. The other party to the objection is the

trust.

Jurisdiction

3. The terms of the Academy agreement between 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 trust, which is the admission authority for the school, on that basis. The objector submitted its objection to these determined arrangements on 11 May 2018. 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 objector's form of objection dated 11 May 2018;
 - b. the admission authority's response to the objection;
 - c. information from the local authority about the allocation of school places in the area;
 - d. the local authority's composite prospectus for parents seeking admission to schools in September 2018;
 - e. maps of the area identifying relevant schools;
 - f. confirmation of when consultation on the arrangements last took place;
 - g. details of the meeting at which the trust determined the arrangements; and
 - h. a copy of the determined arrangements.

The Objection

6. The objection raises two related matters. First, my attention is drawn to the inclusion of two fee-paying independent schools as feeder schools, which is contrary to paragraph 1.9 (l) of the Code.
7. Second, the objector expresses concern about "*the number, location and selection of the feeder schools.*" The objector refers to paragraph 1.15 of the Code, which states,

*"The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds."*

The objector also cites paragraph 1.8 of the Code, which states that oversubscription criteria “***must be reasonable, clear, objective [and] procedurally fair.***”

Other Matters

8. I was unable to find the process for requesting admission out of the normal age group made clear, as required by paragraph 2.17 of the Code.
9. The copy of the determined arrangements that the school provided for me is not the same as the copy published on their website, which appears to be an earlier version. This is a breach of paragraph 1.47 of the Code.

Background

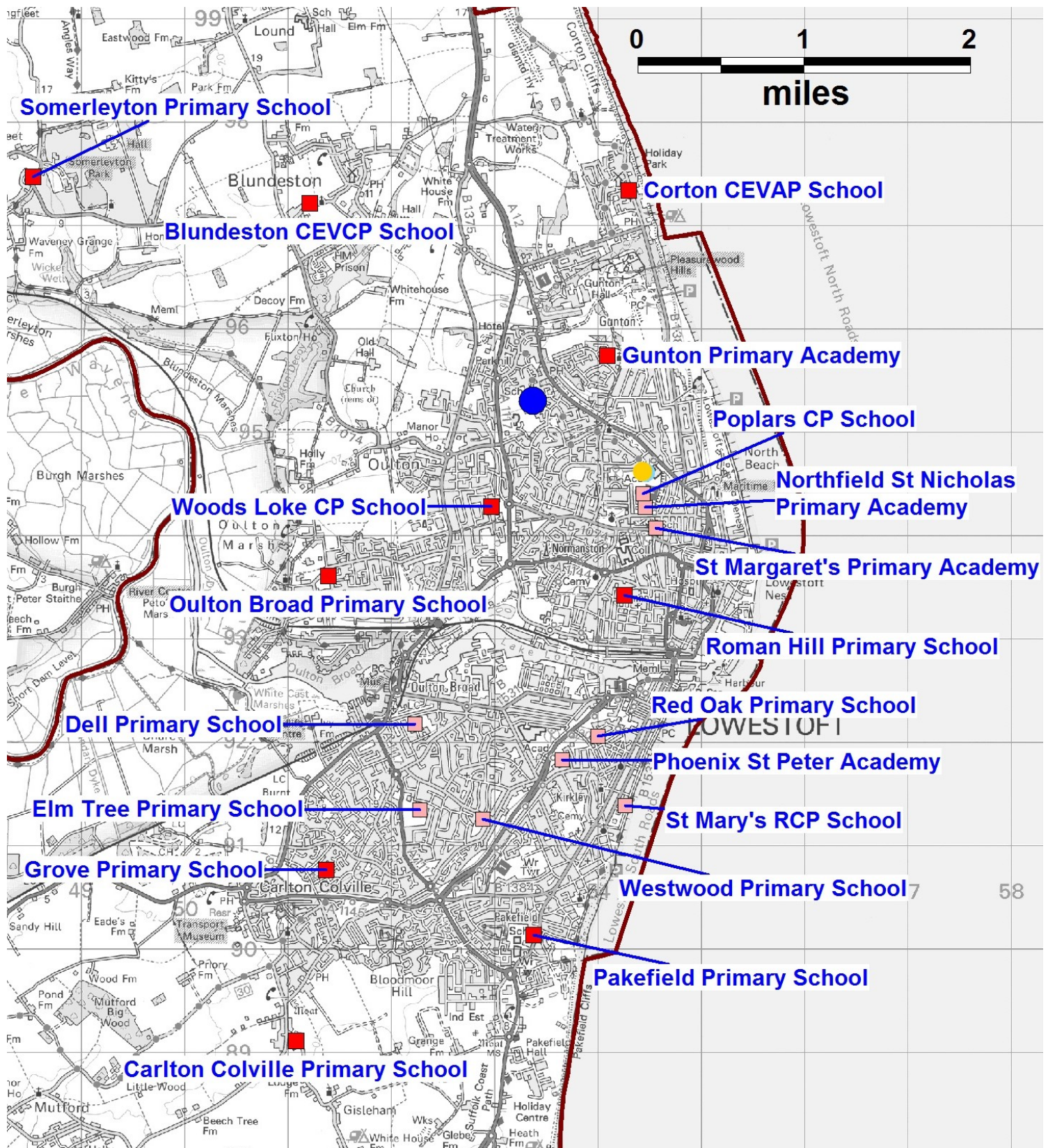
10. The school became an Academy on 1 May 2016. Its predecessor school (Benjamin Britten High School) had been placed in special measures in 2014 when a different headteacher was in post. Ofsted monitoring inspection reports show that by the time the school became an academy leaders – including notably the current headteacher - were making effective progress in bringing about improvements. The school has also recently become much more popular; the headteacher has told me that two years ago it admitted only 91 children and local children were choosing to travel to other schools. For 2018, when the Published Admission Number (PAN) was set at 195, parents of 315 children made the school a preference, including 253 for whom it was their first preference. Before the national offer day, the school informed the local authority, as it is required to do by paragraph 1.4 of the Code, that it would be able to admit above its PAN, up to 260 pupils. On the offer day, 258 pupils were allocated places at the school. The PAN in the arrangements determined for admission in September 2019 is 215.
11. The oversubscription criteria determined by the trust for 2019 can be summarised as:
 - A. Looked after and previously looked after children.
 - B. Children with exceptional medical circumstances.
 - C. Children within the Priority Admission Group (attending a partner primary school and the children of staff members),
“*determined using the following criteria:*”
 1. Children with a sibling attending the school.
 2. Children attending a partner primary school without a sibling attending the school.
 - D. Children who do not attend a partner primary school, “*determined using the following criteria:*”
 1. Children with a sibling attending the school.
 2. Up to 10 per cent of the PAN for children with aptitude in music.
 3. Children without a sibling at the school.
 4. “*The proximity criteria.*”

The method used for ranking applications within each sub-criterion of

criterion C, described in the arrangements as a “*tie-breaker*”, is random allocation; for applications within the sub-criteria of criterion D, it is proximity to the school. There are 18 schools named in the arrangements as being “*partner primary schools*.” Children attending these schools are given priority for places; the schools are therefore what the Code terms “feeder schools” in paragraph 1.15 and the arrangements are subject to the Code’s requirements as to feeder schools.

12. The school is in the coastal town of Lowestoft, Suffolk. The town is divided in two by Lake Lothing. Benjamin Britten Academy is located in the northern part of the town, which is referred to by the local authority as being “*north of the bridge*.” There is a second secondary school north of the bridge: Ormiston Denes Academy. Two other secondary schools are located in the southern part of the town.
13. Maps of the area have been provided by the local authority. Map one (below) shows the location of all of the primary schools in Lowestoft and the two secondary schools north of the bridge. The primary schools that are named as feeder schools in the admission arrangements of Benjamin Britten Academy are indicated by a bright red square; those that are not are shown as pink squares.

Map one: Location of primary schools in Lowestoft.

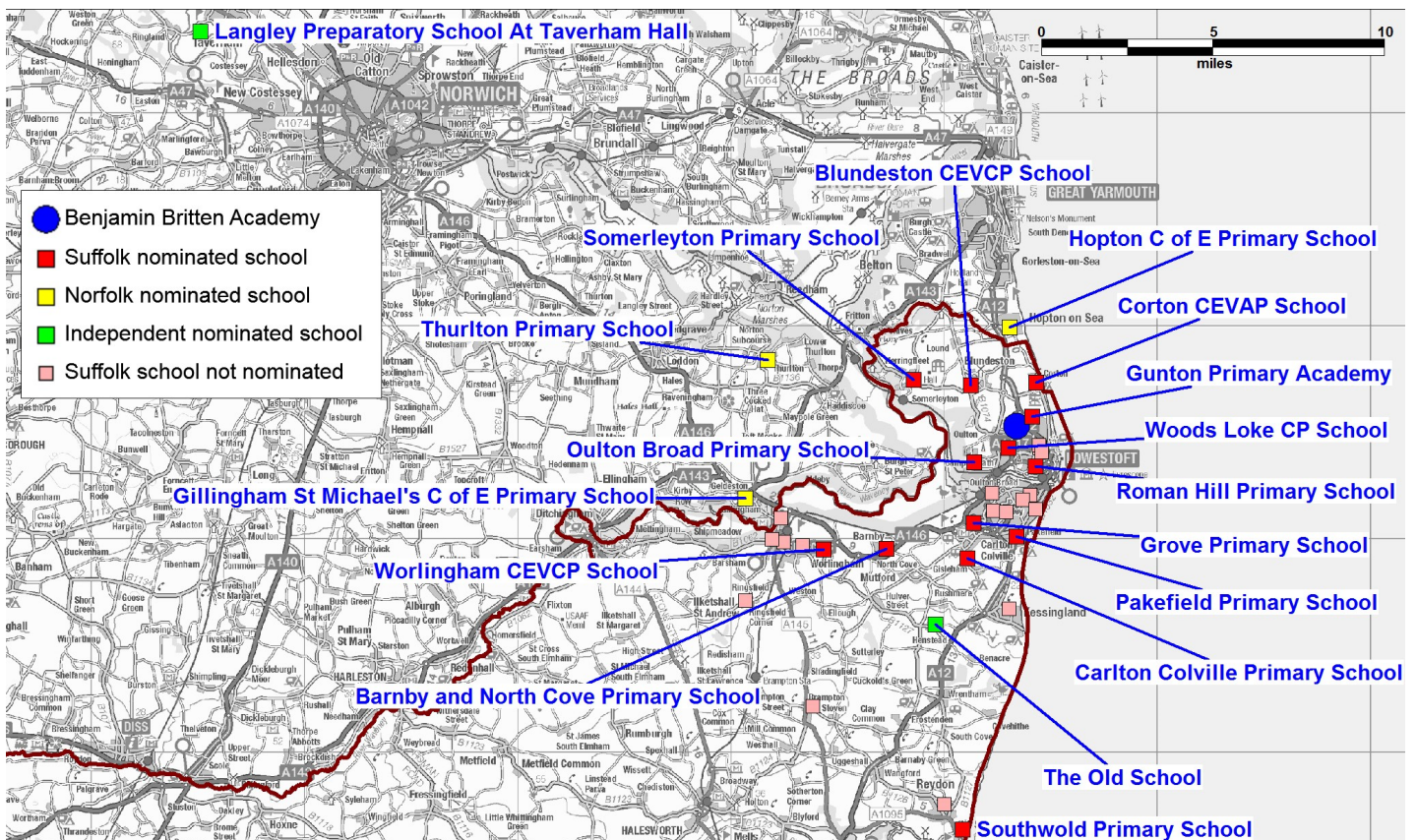


Key: Blue circle: Benjamin Britten Academy
Yellow circle: Ormiston Denes Academy
Red squares: Feeder schools named in admission arrangements of Benjamin Britten Academy
Pink squares: Other primary schools in Lowestoft

14. Map one shows that ten of the 18 feeder schools named in the admission arrangements of Benjamin Britten Academy are located within the town of Lowestoft and its immediate vicinity. Seven of these are north of the bridge; three are south of the bridge. There are three other primary schools north of the bridge that are not named as feeder schools.

15. The other eight primary schools that are named as feeder schools are further afield; these are shown on map two (below), which shows all 18 feeder schools. It should be noted that the local authority has referred to the feeder schools as “*nominated schools*.” Of the eight feeder schools outside the immediate Lowestoft area, three are located in Norfolk (yellow squares), two are independent schools (green squares) and three are in Suffolk (Worlingham CE Primary, Barnby & North Cove Primary and Southwold Primary). The pink squares represent primary schools in Suffolk that are not named as feeder schools.

Map two: Location of all feeder schools.



Consideration of Case

16. I deal first with the two independent fee paying schools. The Code makes clear, in paragraph 1.9 (I), that the admission arrangements of publicly funded schools must not include fee-paying independent schools as feeder schools. I therefore uphold this part of the objection. The school has recognised that this is the case and has undertaken to remove the two schools in question from its list of “*partner primary schools*.”

17. I next consider whether the selection of the other 16 feeder schools meets

the Code's requirement that it is "*transparent and made on reasonable grounds*" (paragraph 1.15). With respect to transparency, the feeder schools are identified by name in the arrangements. Although there may be some doubt as to which Hopton Primary School is referred to, I will follow the local authority's assumption that it is the school of that name located in Norfolk, rather than the much more distant Hopton Primary School in Suffolk. I consider therefore that the selection is transparent.

18. I must also determine whether the feeders have been selected on reasonable grounds. The list of feeder primary schools is prefaced in the arrangements as follows:

"We have strong curriculum and sporting links with the following local Primary Schools...The list of partner primaries is based on the extent to which the various schools in the area work closely with the Academy in terms of transition arrangements such that this works effectively for the education of the children concerned rather than on a geographical basis."

19. I asked the school to provide me with some more detail about the basis or grounds on which partner schools were selected. The executive headteacher, on behalf of the trust, declined to give an explanation, as he did to my other requests for further information. This is unfortunate, as it was an opportunity to make clear how the links and close working with these primary schools differentiated them from those that were not selected as partner schools. As that opportunity was not taken, I can only consider the evidence I do have as to the links between the feeder primary schools and the school.

20. I do have information provided by the local authority about the numbers of children who are due to transfer from each of the feeder primary schools to the school. Table one (below) lists all of the feeder schools and the other primary schools from which children will be transferring in September 2018 to one or other of the two secondary schools north of the bridge, that is, Benjamin Britten Academy (BBA) and Ormiston Denes Academy (ODA). The PANs of the feeder schools and the numbers of pupils transferring are also shown for those schools from which any pupil is due to transfer to BBA. The schools are ordered broadly from north to south for those shown on map one, followed by the eight Benjamin Britten Academy feeder schools that are further afield (shown on map two).

Table one: Pupils allocated places at secondary schools north of the bridge and their feeder schools

Name of primary school	PAN	'North of the bridge'	BBA feeder school	ODA feeder school	To BBA	To ODA	Distance to BBA (miles)
Somerleyton Primary ^	8	√	√	√	4	0	4.7
Blundeston CE Primary ^	30	√	√	√	25	0	2.6
Corton CE Primary ^	16	√	√	√	13	0	2.1
Gunton Primary	45	√	√	√	36	2	0.9
Woods Loke Primary	60	√	√	√	60	9	1.5
Poplars Primary	78	√		√	21	26	1.2
Northfield St Nicholas Pr.	60	√		√	28	17	1.3
St Margaret's Primary	60	√		√	11	38	1.4
Oulton Broad Primary ^	45	√	√	√	23	0	2.7
Roman Hill Primary	75	√	√	√	24	25	1.9
Red Oak Primary	60				1	1	3.2
Dell Primary	60				7	0	2.7
Elm Tree Primary	60				2	0	3.0
Westwood Primary	30				1	0	3.5
Grove Primary	45		√		0	0	4.3
Pakefield Primary	60		√		0	0	4.4
Carlton Colville Primary	60		√		1	0	5.2
Langley Prep.*	*		√		0	0	
Hopton CE Primary	30		√		0	0	3.8
Thurlton Primary	15		√		0	0	11.4
Gillingham St Michael CE	8		√		0	0	11.5
Worlingham CE Primary	45		√		0	0	8.6
Barnby & North Cove Pr.	15		√		0	0	6.5
The Old School*	*		√		0	0	
Southwold Primary	10		√		0	0	14.4

Other schools					0	5	
Unknown					1	2	
Total					258	125	

**Independent fee-paying school*

^Part of BBA "pyramid"

21. The combined PANs of the ten primary schools north of the bridge is 477. The local authority has given me information about the total number actually leaving Year 6 from these schools in July 2018 to go on to secondary schools and that number is 388. The two secondary schools have determined PANs for September 2019 that total 415: 215 for Benjamin Britten Academy and 200 for Ormiston Denes Academy. A total of 362 pupils from the ten primary schools north of the bridge are expected to transfer to the two secondary schools in September 2018, with the remaining 26 children going to schools outside Lowestoft. In short, there appears to have been plenty of capacity in the north of the town for all the children living there and in the outlying villages such as Somerleyton served by the primary school of that name and who sought places in the secondary schools in that part of the town. I note, however, that the school's increasing popularity – combined with the giving of a high level of priority to children attending primary schools outside the north of the town – could result in changes to this position and may do so for 2019 if the arrangements remain as determined.
22. In the past, before it became an academy, Benjamin Britten Academy had a catchment area, defined by the local authority, and was regarded as being part of a 'pyramid' with the four primary schools indicated by the ^ symbol in the table. There is some disagreement between the school and the local authority as to whether these structures are still relevant; it is certainly the case that the school's arrangements contain no catchment area provisions. It is, of course, for the trust as the school's admission authority to determine its arrangements and there is no requirement on it to base these on a catchment area. The combined PANs of the four primary schools in its former pyramid is 99. Benjamin Britten has named these four schools as feeder schools. It would not be right to restrict its feeder schools to this number. To put it another way, the school is entitled to have feeder schools (provided that in doing so it complies with the Code) and it is reasonable for the combined PANs of those schools to amount to more than roughly half of its PAN.
23. In fact, the local authority acknowledges that it is appropriate for Gunton and Woods Loke Primary Schools also to be named as feeder schools for Benjamin Britten Academy as large parts of their catchment areas ("*half*" and the "*majority*" respectively) lie within the catchment area of the school. I take this to mean the catchment area previously operated by the local authority. I also note that Woods Loke is the only primary school that is part of the same trust as Benjamin Britten Academy.
24. In addition to Gunton and Woods Loke Primary Schools, the school has also named Roman Hill Primary School as a feeder school. It has not named the three other primary schools north of the bridge. I note that two of these - Poplars and Northfield St Nicholas - are located on adjacent sites to Ormiston Denes Academy and St Margaret's is a very close distance away.

Therefore, seven primary schools north of the bridge have been named as feeder schools by Benjamin Britten Academy and their combined PANs total 279.

25. As it happens, all of the ten primary schools north of the bridge have also been named as feeder schools by Ormiston Denes in its admission arrangements for 2019, including those that the local authority regards as being part of Benjamin Britten Academy's pyramid. Ormiston Denes' arrangements give priority first to children (after looked after and previously looked after children and siblings) who live in its catchment area. This catchment area is defined as the combined catchment areas of the ten primaries with next priority being given to other children who attend one of the primaries. The local authority has not made an objection to the arrangements of Ormiston Denes Academy.
26. Table one suggests that, if 2018 is any guide, it can be expected that the overwhelming majority of pupils who will be seeking places at Benjamin Britten Academy in September 2019 will be living in the part of Lowestoft north of the bridge and the surrounding villages and that they will be attending one of the ten primary schools in this area. The number of places allocated at Benjamin Britten Academy for September 2018 almost exactly matches the number of pupils whose parents made the school their first preference. A total of 185 places have been allocated to pupils from the seven primary schools north of the bridge that it has named as feeder schools. Children transferred from each of these schools. A further 60 pupils who have been allocated places attend the other three primary schools north of the bridge that are not named as feeder schools. I consider that it is not unreasonable for the school to have selected seven of these primary schools as its feeder schools, omitting the three geographically closest to Ormiston Denes Academy. I recognise that this does create an imbalance between the feeder schools of the two secondary schools, as Ormiston Denes Academy has named all ten primary schools as its feeders. As that school is significantly undersubscribed for September 2018, I do not regard this as problematic. In addition, because a significant number of the primary schools north of the bridge are named as feeders for both the school and Ormiston Denes I do not consider it problematic for the sum of the feeders for these schools each to be greater than the number of places each has available.
27. In summary, therefore, although the school has not articulated grounds for their selection other than in so far as the arrangements themselves refer to curriculum and sporting links and transition arrangements, I consider that it is reasonable that seven schools north of the bridge are named as feeder schools. These schools are:

Somerleyton Primary;
Blundeston CE Primary;
Corton CE Primary;
Gunton Primary;
Woods Loke Primary;
Oulton Broad Primary; and
Roman Hill Primary.

28. I next consider the remaining nine feeder schools that have been named, that is, the three in the southern part of the town and the six publicly funded schools further afield shown on map two. Table one shows that only one pupil from these nine schools will be transferring to the school in September 2018. This pupil attends Carlton Colville Primary School; no pupil from the other eight named feeder schools was allocated a place at the school, nor did any parent make it their first preference.

29. I find it hard to reconcile this with the statement in the admission arrangements about transition. Without further explanation from the school, I cannot understand how the naming of these nine primary schools as feeder schools matches the school's stated rationale of selecting feeder schools that:

“work closely with the Academy in terms of transition arrangements such that this works effectively for the education of the children concerned rather than on a geographical basis.”

It may be that the school is expecting significant numbers of pupils to transfer to it from these primary schools in September 2019; there may be a reason for naming them as feeder schools that is connected to the school's specialisms. However, as it has not answered my request for more information, I do not know if either of these possibilities is the case. I do not understand how schools can be said to “*work effectively*” over “*transition arrangements*” when no pupils are transferring between them. These nine schools are located much closer to other secondary schools and parents are not choosing to seek places at Benjamin Britten Academy. As a result, I cannot find any reasonable grounds, including geographical grounds or those based on patterns of enrolment, why these schools, which I list below, have been selected as feeder schools:

Grove Primary;
Pakefield Primary;
Carlton Colville Primary;
Hopton CE Primary;
Thurlton Primary;
Gillingham St Michael's CE Primary;
Worlingham CE Primary;
Barnby & North Cove Primary; and
Southwold Primary

30. Therefore, I uphold the objection to the extent that the selection of some of the feeder schools, that is, those listed in paragraph 29 above, is not “*transparent and made on reasonable grounds*”, as required by paragraph 1.15 of the Code. In order to comply with the Code, the arrangements must be revised.

31. It may, of course, be that there are more links between these primary schools and the school which I have not been told about. I have accordingly considered the overall effect of the arrangements. I have considered whether the arrangements meet the Code's requirements relating to fairness

in paragraphs 14 and whether the oversubscription criteria meet the requirements as to reasonableness in 1.8. The objector's particular concern is that the combined PANs of the sixteen maintained feeder schools named in the arrangements total 567, which far exceeds the PAN of the school. I have already drawn attention to the fact that, given the overlap in feeders between Ormiston Denes and the school, it is not problematic that the sum of the feeders for each is more than the number of places each has available. That is not, however, the end of the story. Children attending feeder schools have a high priority for places within the school's oversubscription criteria (criterion C). The means of ranking applicants within this criterion, described in the arrangements as a "tie-breaker", is random allocation. The objector's concern is that,

"This means that pupils attending Southwold Primary School, for example, which is approximately 14.4 miles walking distance away from the academy will have the same priority as those who live next door to the academy."

32. Whether a child living next door to the academy should or should not have a higher priority than a child living 14.4 miles away will depend on the circumstances of the children and the context of the school. In, for example, a very rural community, it might be appropriate for both to have the same priority. In a school with a religious character, the child living next door might have much less priority than the child living 14.4 miles away. Sometimes a child living close to a school will have less priority for a place at that school than children living further away who would face a longer and more difficult journey to an alternative school. It appears to me that it is conceivable that the number of applicants qualifying for priority under criterion C from the seven feeder schools north of the bridge will exceed the school's PAN determined for 2019, which is 215. If this were to be the case, I can envisage that the use of random allocation could be unfair to some groups of pupils. In particular, pupils living in Somerleyton or Blundeston and attending the primary schools there would have no greater priority than pupils attending other feeder schools. They may therefore be unsuccessful in obtaining a place at Benjamin Britten Academy if oversubscription occurred within criterion C. Although, based on the enrolment figures for September 2019, a place would be available for such pupils at Ormiston Denes Academy, the journey to that school would take them directly past Benjamin Britten Academy. The journeys from these rural locations are already relatively long: Benjamin Britten Academy is 4.7 miles from Somerleyton Primary School and 2.6 miles from Blundeston Primary School. The catchment area for Blundeston Primary School includes settlements north of Blundeston itself, such as Lound, which are further from Benjamin Britten Academy. The additional distance to Ormiston Denes Academy would add a further 0.6 miles to these distances. I note in passing that Oulton Broad Primary School is 2.7 miles from Benjamin Britten Academy, but Ormiston Denes Academy is no further away.

33. It is not always unfair that children cannot attend their nearest secondary school as I have indicated above. However, in these circumstances I do consider it an unfair effect of the arrangements if children living in a rural location and attending a feeder primary school for what is their nearest secondary school do not have a high chance of a place at that school. The

children who attend the feeder primary schools south of the bridge and outside Lowestoft do all have other accessible schools. I asked the school to explain why it had decided to use random allocation rather than another approach to rank applicants within the feeder schools criterion, but, again, no response was forthcoming. It would be possible for the school to revise its arrangements to remove the potential unfairness I have identified. Simply replacing random allocation with priority based on distance from the school would not achieve this, as the children in Somerleyton, Blundeston and nearby settlements live furthest from the school. An alternative approach, based perhaps on giving children attending certain feeder schools a higher priority than those attending other feeder schools, would address the unfair and unreasonable effect of the current arrangements. I find, therefore, that the part of the arrangements that gives priority amongst children attending a feeder school on the basis of random allocation is potentially unfair in its effect and I uphold this aspect of the objection. The arrangements must be revised in this respect in order to comply with the Code.

34. There is one final point I wish to make. The headteacher has commented that before the school became as popular as it is now, numbers of children who lived in its then catchment area opted to attend schools elsewhere. I observe that they did so even though they were not attending feeder primaries or living in catchment areas for those other schools. Parents can apply for a place at any school they wish their child to attend and if a place is available it must be offered unless a higher preference can be met. Children attending those schools which I have ruled cannot be named as feeders can still apply for and be offered a place at the school. In 2018, the school admitted about its PAN. Provided it has the capacity to do so, notifies the local authority as required at paragraph 1.4 of the Code, and if there is sufficient demand for places, the school is free to do the same for 2019.
35. I turn now to the timing for making changes to the arrangements. The Code provides at paragraph 3.1 that arrangements must be amended within *“two months of the date of the decision (or by 28 February following the decision, whichever is soon), unless an alternative timescale is specified by the Adjudicator.”* In this case, I recognise that the trust as the admission authority will want to consider what alternative approach might meet the school’s needs and take account of its increasing popularity. It is likely to want to consult of changes. I also recognise that the arrangements as determined could result in some children living in the area not being able to secure a place at a local school in 2019. I accordingly determine that changes relating to the nine primary schools listed at paragraph 29 of this determination must be made within two months of the date of this determination. Other changes to deal with the unfairness and unreasonableness set out at paragraph 33. must be made by 28 February 2019 which is also the deadline for determining arrangements for 2020.
36. Finally, I turn to other matters. First, when I reviewed the arrangements I was unable to find the process for requesting admission out of the normal age group made clear. This is a requirement of paragraph 2.17 of the Code. The copy of the determined arrangements that the school provided for me is not the same as the copy published on their website, which appears to be

an earlier version. This is a breach of paragraph 1.47 of the Code which requires that determined arrangements are published on the admission authority's website.

Summary of Findings

37. The arrangements list 18 feeder schools; seven of these are located in the vicinity of the school and the other 11 are widely dispersed geographically. Two of the more distant feeder schools are independent fee-paying schools, which is contrary to paragraph 1.9 (l) of the Code. In September 2018, only one pupil will be transferring to the school from the nine other more distant feeder schools. The school has declined to provide an explanation as to how and why these nine schools were selected as feeder schools. For these reasons, I find that the arrangements do not comply with paragraph 1.15 of the Code, which requires that the selection of feeder schools “***must be ... made on reasonable grounds.***” I therefore uphold the objection. The two independent schools and the nine schools listed in paragraph 29 of this determination must be removed from the list of feeder schools. I also find that the use of random allocation to rank applicants attending feeder schools is potentially unfair in its effect, contrary to paragraph 14 of the Code and potentially unreasonable in its effect contrary to paragraph 1.8 of the Code. This aspect of the arrangements must be revised.

Determination

38. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2018 determined by Hartismere Family of Schools for Benjamin Britten Academy of Music and Mathematics, Lowestoft, Suffolk.
39. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.
40. 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 within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I specify a deadline of two months from the date of the determination in relation to the naming of nine feeder schools and a deadline of 28 February 2019 in relation to priority given by random allocation among feeder school children and other matters.

Dated: 23 July 2018

Signed:

Schools Adjudicator: Peter Goringe