



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA3478

**Objector:** Essex County Council

**Admission Authority:** Castle View School Academy Trust for Castle View School, Canvey Island, Essex

**Date of decision:** 25 September 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 2019 determined by Castle View School Academy Trust for Castle View School in the local authority area of Essex.**

**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.**

### **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 Essex County Council about the admission arrangements for 2019 (the arrangements) for Castle View School, an academy school for students aged between 11 and 16. The objection is to the reduction of the published admission number (PAN) from 240 in previous years to 210 for 2019.
2. The parties to this objection are:
  - 1) Essex County Council which is the objector and the local authority for the area in which the school is situated (the local authority); and

- 2) Castle View School Academy Trust (the trust) which is the admissions authority for Castle View School (the school).

### **Jurisdiction**

3. The terms of the academy agreement between the trust and the Secretary of State for Education require that the admission arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the trust on that basis. The local authority submitted its objection to these determined arrangements on 14 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 local authority's form of objection, supporting documentation and further information in response to my questions;
  - b. the trust's response to the objection, supporting documents and responses to my questions;
  - c. maps of the area identifying the school; other relevant schools; and the home locations of students attending the school;
  - d. information on the most recent consultation on the arrangements;
  - e. information on the websites of the Department for Education (DfE), Ofsted, the school and the local authority;
  - f. Building Bulletin 103 published by the DfE which provides guidelines for the spaces needed in mainstream schools;
  - g. an extract from the minutes of the meeting at which the trust determined the arrangements; and
  - h. a copy of the determined arrangements.

### **The Objection**

6. The objection is to the reduction in the PAN from 240 in 2018 and previous years to 210 for 2019. The local authority said that the school has capacity for 240 children and that forecasts indicate that if the PAN is reduced to 210 then there will be insufficient school places for children in the area. In support of its objection the local authority said that the school was acting unfairly and unreasonably

and against the spirit of parental preference by reducing the number of places available at a state-funded school when there will be a need for those places and the school has the capacity to provide those places.

## Other Matters

7. When I considered the arrangements I found other matters which did not meet the requirements of the Code. Some do not conform with paragraph 14 of the Code which says, *“In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”* Other matters did not conform with other requirements of the Code and all are listed below (with the relevant paragraphs of the Code in brackets):
  - a) Previously looked after children do not have first priority in the oversubscription criteria (14, 1.8 and 1.7).
  - b) It is not clear that children with education, health and care plans which name the school must be admitted (14 and 1.6).
  - c) There is no final tie-breaker (14 and 1.8).
  - d) It is not clear how distance is measured from the home address (14 and 1.13).
  - e) There is no information on the right to apply for admission outside of the normal year of entry (14 and 2.17).
  - f) The information on the school’s website is unclear as the arrangements for 2018 are not published and the arrangements for 2019 are through a link labelled the arrangements for 2017 (14 and 1.47).
  - g) The definition of sibling is unclear (14 and 1.11).
  - h) The information on waiting lists is insufficient (14 and 2.14).
8. The trust has said that it will address these matters which is welcome. I will therefore not discuss them further other than to make clear that the Code requires that the arrangements be amended to address the points set out here.

## Background

9. Castle View School is situated on Canvey Island on the south Essex coast. The island, which is around 18 square kilometres, is largely residential on its eastern half and mainly farmland, marshes and industrial areas on its western half. The island is separated from the mainland by a network of creeks and connected in the northwest by two road bridges. The school is situated to the east of the island and is one of two secondary schools on the island. The other secondary school, Cornelius Vermuyden School, is further west and nearer to the mainland.

10. The school opened as a single academy trust in 2014 following conversion from an existing school on the same site. Ofsted judged the school to require improvement in 2017 and the Ofsted report described the school as smaller than average.
11. The oversubscription criteria in the admission arrangements for the school can be summarised as:
  - 1) Looked after children
  - 2) Children with a sibling at the school
  - 3) Proximity of the child's home to the school in a straight line.
12. The oversubscription criteria in the arrangements for the school in previous years included use of a catchment area. This is no longer part of the oversubscription criteria but is still used as a planning area in the data provided to me by the local authority.

### **Consideration of case**

13. The statutory duty to secure the provision of school places for an area rests with the local authority for that area and is set out in section 14 of the Education Act 1996. The local authority's duty to secure sufficient school places means that local authorities need to forecast how many places will be needed and work with the schools and trusts in their areas to provide the necessary places.
14. Admission arrangements, including the PAN, must be determined each year and anyone can make an objection if they believe that the arrangements do not comply with the requirements of the Code. However, if an admission authority determines to keep the same PAN no objection can be made to this. This is set out in paragraph 3.3 b) of the Code. The only exception to this provision relates to schools for which the admission authority is the local authority which is not the case here. This means that the local authority can object (as it has done) to the decision to reduce the PAN for 2019. However, if I do not uphold the objection and the PAN remains at 210 for 2019 and it is set again at that level for 2020 then neither the local authority nor any other person or body would be able to make an objection. If the decision to reduce the PAN means that there are insufficient school places available in the area then this has serious implications for the local authority and its duty to secure sufficient school places for the children in its area. In these circumstances I need to consider the need for school places over time, not just for 2019.
15. I will now consider: the steps the trust took in this matter; the capital funding framework to meet a basic need for additional school places; relevant data including the local authority's forecasts; and the trust's reasons for setting the PAN at 210.

16. The trust wrote to parents of those attending the school in a letter dated 13 November 2017 saying that it was consulting on setting the PAN at 210 for 2019. The trust, which is also the governing board for the school, met on 25 January 2018 and discussed the two responses received to the consultation. One was from the other school on the island; the trust has told me that this was an objection to the change. The second was from the local authority which, the minutes of the meeting record, had opposed the proposal on the grounds that there was "*a need for more places in the area rather than less.*"
17. The minutes also record that the trust had requested information on the number of children living on the island who had been admitted to schools off the island over the last three years and that "*the number was at least 80 which nullified the objection.*" I asked for clarification of this statement. The trust told me, "*There are approx. 80 students that live on Canvey who in the last three years been [sic] admitted to schools off the island, and this practice will continue therefore nullifying the predictions.*"
18. The minutes further record an offer to "*amend the PAN in future if Essex County Council enforced the PAN at the other Canvey school.*" I asked for further information on this statement and the trust told me that this "*was referring to an open discussion concerning the need for transparency from Cornelius Vermuyden as their NOR (number on roll) often either 1) regularly exceeds the 180 PAN indicating that they could accommodate more or, 2) the published number of students receiving GCSE results in Year 11 for the past two years was below the PAN 180 indicating some spaces in some year groups.*" I note that the comments regarding Year 11 are historical and not directly relevant to forecasts of future numbers.
19. I respect the commitment made by the trust with regard to reviewing its PAN, albeit with the above caveat. It is also the case, however, that the PAN is the only legally binding guarantee of a number of school places which must be made available at a school in its normal year of entry (Year 7 (Y7) in this case). The local authority could be placed at risk of failing in its duty to secure the provision of school places if it relied on anything else than the PAN to make sure that there are sufficient school places for the children in its local area. It may be the case, for example, that the other school on the island, which is also an own admission authority school, could accommodate more than 180 children in Y7 but, as explained above, no person or body can formally object to its maintaining the same PAN and there are very limited powers for a local authority to require a school to admit above its PAN.
20. A PAN of 240 means that if the school admitted to its PAN each year it could have 1200 students. The trust's funding agreement with the Secretary of State for Education agreed on 1 October 2014 records the capacity of the school as 1200. This is the same number as that

recorded on the DfE website Get Information About Schools. A PAN of 210 if maintained across five years would lead to a maximum school population in time of 1050. There is therefore a reduction of 30 places for 2019 and, if the PAN were to continue at 210 for five years, a reduction of 150 places overall.

21. Where a local authority identifies a need for additional school places in order to meet its duty to secure sufficient school places, it can make a case to the DfE for capital funding for what is called 'basic need' for school places. Capital funding allocations are made to local authorities to meet the cost of providing such new school pupil places whether by expanding existing maintained schools, free schools or academies, or by establishing new schools.
22. Funding for new places is only provided where the existing capacity of publicly funded schools is below the level of projected need for places. Capacity in this context is not calculated by multiplying the PAN for each school by the number of year groups. Instead it is calculated by reference to the relevant School Capacity Survey (SCAP). In this case, this means that the number of places at the school would be counted by the DfE as 1200 even if the trust reduced the PAN and were not making that number of places available. This in turn means that the local authority would not be eligible for basic need funding to cover the "gap" between the number of places provided in the school if its PAN were 210 and the capacity of 1200. In this instance the gap could be 150 places.
23. This means that if there were a need for additional places above the PAN of 210 that any capital investment required would be unlikely to be provided by the DfE as the places already exist but are not available. It is also unlikely to be good use of the public purse to invest in building new school places when such places already exist.
24. The local authority explained that its forecasts are based on birth rates, GP registration data, housing data and the historic transfer rate to secondary schools from primary education. The local authority says that this data shows a sustained increase in children who will require a secondary school place in the coming years as these children are currently in primary schools in the area. There has been significant inward migration, particularly of older primary school children. There is also movement out of the area but the overall pattern has been of increased numbers in primary schools.
25. The local authority provided me with its forecasts based on the current PAN and the secondary school places available on Canvey Island and Benfleet, the next nearest town with secondary schools to Canvey Island. These are shown below and illustrate that if the PAN

were reduced by 30 (from 240 to 210) for admissions in 2019 then there is likely to be insufficient secondary school places across the area in 2019 and beyond.

Table 1: The forecast number of surplus or deficit places for the planning areas of Canvey Island and Benfleet as provided by the local authority

Planning areas	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
Canvey Island	15	38	-2	17	25	-5
Benfleet	-4	20	-7	-8	-8	-8
Total across both areas based on 2018 PANs	11	58	-9	9	17	-13
Total across both areas if PAN is reduced by 30 for 2019 and beyond	-19	28	-39	-21	-13	-43

26. The pattern varies but overall shows that there are unlikely to be sufficient places in some years if the PAN were reduced and some risk of insufficient places with the PAN set at 240. In the past there have been children living on Canvey Island who have been admitted to schools on the mainland, in Benfleet in particular. The Benfleet schools largely give priority to those children living in their catchment area or based on distance. The forecast shows that additional demand from children local to Benfleet will make it less likely that there will be places available to accommodate children from further afield.

27. It is my understanding, from the information provided to me by the local authority, that this movement of children from Canvey Island into Benfleet has been taken into consideration in the forecasts above. Forecasts can only be estimates and many factors can affect the actual outcome. However, table 1 illustrates that in some years there is already a risk, possibly for 2019 and probably for 2021, of not being able to admit all children seeking a place at their local schools in Y7 across Benfleet and Canvey Island. This is the case before taking into account the reduction in PAN at the school. Of course, the parents of Benfleet may decide to apply for schools further away leaving capacity for those displaced by the lack of places on Canvey Island and so I asked the local authority for further information on this possibility.

28. The local authority explained that Benfleet and the next town, Basildon, have had more school places than children in their populations so it has been possible for children from other areas, such as Canvey Island, to be admitted to secondary schools in the towns, largely based on distance criteria. However, as both Benfleet and Basildon have increasing numbers of local children the local authority said, *“the expectation over time is that Basildon and Benfleet places will be filled more from local pupils, and other pupils who currently attend schools in this area but live further away will then need to attend schools closer to their home address.”* The local authority calculations are that around 80 children live on Canvey Island who each year are admitted to schools away from Canvey Island, and that these children will not be able to find places there in the future.
29. The forecasts in table 1 show only 11 surplus places in 2019 across both Canvey Island and Benfleet if the PAN of the school were to remain at 240 and a deficit of 19 places if the PAN were to be that set by the trust. This risks there being insufficient places so I wished to understand where, if children living on Canvey Island were not able to access a place either on Canvey Island or in the next nearest town of Benfleet, they would need to travel to find a place. The local authority explained that, *“Secondary aged pupils living in Canvey Island largely attend schools in Canvey (85%), but also Benfleet (13%) Basildon (1%) or other parts of Essex (1%).”* The journey to a school in Basildon would be at least 12 kilometres from the school. There would need to be serious justification to make some children take that journey to school each day past this and other schools because there were insufficient places in this school while the number of places did not actually reflect the physical capacity of the school. There is also doubt, as discussed above, whether there would be capacity in the schools of Basildon to accommodate these children so some may have to travel still further.
30. The school told me that 148 children were admitted to the school in September 2018. This is 92 children lower than the PAN of 240 set for 2018, which is a significant difference. However, the local authority had anticipated that there would be 117 surplus places across the areas of Benfleet and Canvey Island for 2018. The local authority has told me that at the start of September 2018 there were 115 vacancies across Canvey Island and Benfleet. The other school on Canvey Island, Cornelius Vermuyden, has admitted 184 children which is four over its PAN of 180. Overall, the forecast of 117 surplus places in Canvey Island and Benfleet taken together for 2018 was accurate and this helps me feel confident in the forecasts of future demand.
31. There are considerable swings in the numbers of children anticipated but table 1 shows a future trend of the supply of places not meeting demand which will be exacerbated if the PAN remains at 210.



32. I will now turn to the reasons the trust has given for reducing the PAN. The consultation letter said, "*The proposal will bring the admission number in line with its current number of students per year group. This reduction in the published admission number will not affect ethos, values and success of Castle View School but will enhance the provision of teaching and learning it provides to its students.*" In its response to the objection the trust explained that it thought that a PAN of 210 would be sufficient to meet demand for places and would not impact on parental preference.
33. The trust said that the leadership of the school constantly looks "*at the local management of the school site and make(s) operational decisions based on the health and safety and safe working environment needs of students, colleagues and visitors and therefore have [sic] taken consideration of the objection but reserve(s) the right to make local decisions and judgements in this regard.*" The trust has not, however, raised any concerns with me that there would be any health and safety risks in the PAN being set at 240. Indeed, the trust has provided little explanation to me of its decision to set the PAN at 210 for 2019.
34. In its objection the local authority said that the school perceived that its space was not sufficient for a PAN of 240 which would create, assuming 30 children to a class, eight forms of entry. The local authority expressed the view that it thought the space "*compares favourably*" to schools admitting at least 240 children (eight forms of entry) and possibly 300 (10 forms of entry). I therefore asked the trust to comment on this.
35. The trust explained that significant changes to the way of working would be needed to accommodate 1200 students. The school, as at 9 July 2018, had 808 students on its roll. This is considerably fewer than its capacity of 1200 and the trust said that this capacity has not been put to the test in recent years. The trust told me that the school's corridors are narrow, the classrooms small and that during break and lunchtimes there is not sufficient indoor space for all students and, in particular, that the school dining room cannot accommodate the number of students currently on roll. The trust further explained that it was not in a financial position to be able to redesign the school in order to accommodate a bigger dining room and break out areas.
36. The internal area of the school is the school has told me 9056 square metres. Building Bulletin 103, '*Area guidelines for mainstream schools,*' published by the DfE provides non-statutory area guidelines for mainstream school buildings. Building Bulletin 103 indicates that 9056 square metres is around what is anticipated for a school of 1200 students. The problem is therefore not lack of space overall but making sure that the spaces are fit for purpose.

37. I can understand the trust's concerns about the school's design and the costs of remodelling. Additional children will, of course, lead to additional income but I can see that it will be challenging to undertake any significant remodelling of the buildings. However, I have not been provided with convincing evidence that the school would not be able to accommodate a PAN of 240 for admissions in 2019 and the 1200 students that could ensue if the PAN were maintained at that level for future years. It is usual, for example, for a secondary school to provide lunch in more than one sitting. It is reasonable to expect the trust to make adjustments and make best use of capacity from the resources it has at its disposal.
38. The evidence of need for a PAN of 240 in the near future is convincing. It includes forecasts of future need for school places in the area and the risk of some children having to undertake journeys to schools in other areas, such as in Basildon, and going further to get to school than would be reasonable or necessary could they go to this school. A PAN of 210 when there is an anticipated need for 240 places and the school has capacity to provide 240 places is not justifiable in these circumstances. I therefore uphold the objection.

### **Summary of findings**

39. The trust set the PAN for the school at 210 which is a reduction of 30 from 2018 and previous years when the PAN was 240. The school has capacity for a PAN of 240. The local authority forecasts that a PAN of 240 is needed to allow it to fulfil its duty to secure the provision of school places and to avoid children who live in the area of the school having to travel further to other schools that are some distance away. The school would have to make some adjustments to accommodate operating at its capacity but on the evidence presented to me any adjustments needed seem reasonable and achievable.
40. There are other matters as described above which do not comply with the Code which mainly relate to missing information and a lack of clarity. The Code requires the trust to revise the arrangements to address these matters.

### **Determination**

41. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2019 determined by Castle View School Academy Trust for Castle View School in the local authority area of Essex.
42. 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.

43. 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.

Dated: 25 September 2018

Signed:

Schools Adjudicator: Deborah Pritchard