



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3597

Objector: Nottinghamshire County Council

Admission Authority: Redhill Academy Trust for Colonel Frank Seely Academy, Calverton, Nottingham

Date of decision: 23 September 2019

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2020 determined by Redhill Academy Trust for Colonel Frank Seely Academy in the local authority area of Nottinghamshire County Council.

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 that the arrangements must be revised by 31 October 2019 so that the PAN for 2020 is 180 at the deadline for applications for secondary school places for that year.

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 Nottinghamshire County Council, about the admission arrangements for September 2020 (the arrangements) for Colonel Frank Seely Academy, an academy secondary school for students aged between 11 and 18 years (the school). The objection is that the consultation, the date of determination and the publication of the arrangements did not meet the requirements of the Code; and to the reduction in the published admission number (PAN) from 180 in previous years to 150.

2. The parties to this objection are:
 - 2.1. The Redhill Academy Trust which is a multi-academy trust and the admission authority for the school (the trust); and
 - 2.2. Nottinghamshire County Council which is the local authority for the area in which the school is situated and the objector (the local authority).

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 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 13 May 2019. 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.

4. I asked the trust for comment and information regarding the objection and other matters I raised. Some information was provided but not all that had been requested and, in particular the trust did not comment on points raised by the objector and by me. The trust was reminded that information and comments were outstanding. It responded by means of an email dated 27 August 2019 which said, "*With regards to this, we are not pursuing it and thus will not be making any further comments.*" I have not received any further comments or information from the trust since that time despite further communications shared with it and the local authority.

5. The trust had raised in earlier communications the possibility that it might increase its PAN back to 180 (a change it is permitted to make as explained in paragraph 3.6 of the Code). When I received the email of 27 August 2019, I checked the school's website and noted that the arrangements as they stood on the website on 28 August 2019 said that the PAN was 180. However, the PAN for the school was set at 150 and this was the PAN when the objection was made. The local authority has not asked to withdraw its objection. I, therefore, have a legal requirement under paragraph 3.1 of the Code, to consider the objection as made on 13 May 2019, including the setting of the PAN at 150. Moreover, before completing this determination, I again checked the school's website on 11 September 2019. At that time the arrangements on the school's website were marked '*proposed*' and say that the PAN is 150. I then again checked the arrangements on the school's website on 20 September 2019 prior to completing this determination and the arrangements say that the PAN is 150 and the arrangements are no longer marked '*proposed*'.

Procedure

6. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
7. The documents I have considered in reaching my decision include:
 - a. the local authority's form of objection, supporting documents and information provided at my request including data on student numbers and forecasts of student numbers;
 - b. information provided by the trust at my request including information on the consultation and student numbers;
 - c. an extract from the minutes of the meeting of the trust at which the arrangements were determined;
 - d. copies of the determined arrangements including maps of the catchment area;
 - e. information on the websites of the Department for Education and the school; and
 - f. a map of the area showing secondary schools in the planning area for the school.

The Objection

8. The objection has several aspects. These are (with the numbers of the relevant specific paragraphs of the Code in brackets):
 - 8.1. The consultation held by the trust on changes to the admission arrangements did not meet the requirements of the Code as it was less than six weeks long; there was insufficient explanation for the proposed PAN; it may not have been brought to the attention of those entitled to be consulted as required by the Code and the trust may not have considered the outcomes of the consultation (1.42 to 1.45).
 - 8.2. The arrangements were determined after 28 February 2019 (1.46).
 - 8.3. The arrangements were not published on the school's website once determined (1.49).
 - 8.4. A PAN of 150, a reduction from 180 in previous years, means that there may not be sufficient secondary school places for the children of the area.

Other Matters

9. As they had been brought to my attention, I considered the arrangements as a whole and it appeared that the following matters may not conform with the requirements of the Code (specific relevant paragraphs of the Code in brackets).

- 9.1. The map of the catchment area on the school's website lacks clarity and it is inconsistent with other information provided on the catchment area (14 and 1.14).
- 9.2. The definition of sibling may be unclear (14 and 1.11).

Background

10. The school is situated in Calverton which is a small town about seven miles outside Nottingham. The school is the only secondary school in Calverton itself. The next nearest secondary schools are around three miles away but there are around 35 state funded secondary schools within ten miles of the school. The school became an academy and joined the Redhill Academy Trust on 1 October 2017. The funding agreement for the school, dated 28 September 2017, gives the capacity of the school as 994 including 95 places for the sixth form leaving 899 places for the five year groups 7 to 11 inclusive. The previous PAN for the school was 180 and five year groups of 180 would make 900 places which is just one above the capacity stated in the funding agreement.

Consideration of Case

Consultation

11. I will consider the aspect of the objection relating to the consultation first. Paragraphs 1.42 to 1.45 are the main paragraphs of the Code relating to consultation and state when a consultation must be held, who must be consulted and other related matters. The trust provided me with some information on its consultation. This information included communications which stated that the consultation was from 10 December 2018 until 18 January 2019. This is a period of 40 days. The Code says that the consultation **must** be for a minimum of six weeks. Six weeks is 42 days and so the consultation was not for a minimum of six weeks and the consultation did not meet the requirements of the Code in this respect.

12. Part of the local authority's objection was that not all those who should have been consulted, were in fact consulted. The relevant sections of paragraph 1.44 of the Code say, "*Admission authorities **must** consult with:*

- a) parents of children between the ages of two and eighteen;*
- c) all other admission authorities within the relevant area (except that primary schools need not consult secondary schools);*
- d) whichever of the governing body and the local authority who are not the admission authority."*

13. The trust provided a copy of emails dated 10 December 2018 sent to various bodies and people telling them that there was a consultation on the school's arrangements and that the consultation document was attached. It would appear that one email was sent to

the schools named in the admission arrangements as the “*linked primary phase*” schools (the feeder schools) for the school. This asked the feeder schools to share the consultation document with their parents through their communication systems. There was also a letter provided to me which is addressed to ‘*Dear Parent*’ so I will assume that this has been sent to parents of those already attending the school and possibly to the feeder schools to be provided to their parents. These emails give me some assurance that efforts were made to consult with some parents of children aged between two and eighteen and the schools named as feeder schools in the arrangements. I therefore believe that the consultation partly complied with the requirements of paragraph 1.44a) of the Code. I have been provided with no evidence that there was consultation with parents whose children who were not yet attending school and so not all those aged two and above.

14. I will now consider the other bodies required to be consulted. The local authority provided me with a copy of a letter dated 2 October 2018 which it had sent to all admission authorities in its area which reminded them of their duties to consult and concluded, “*Nottinghamshire County Council will post any proposed arrangements received by admission authorities on its public website but it remains the admission authority’s responsibility to consult fully in line with the requirements of the School Admissions Code.*” The communications provided to me by the trust included an email dated 4 December 2018 to the local authority which said that there was a consultation on the school’s arrangements and “*We are only proposing to change the PAN from 180 to 150.*” The local authority agreed to post the document on its website. The local authority was consulted as required by paragraph 1.44d) of the Code; I will discuss this further below.

15. Paragraph 14.c) requires that “*all other admission authorities within the relevant area (except that primary schools need not consult secondary schools)*” must be consulted. The local authority told me that in Nottinghamshire the relevant area is the area of the district or borough council in which the school concerned is located. The school is situated in the area of Gedling Borough Council. The area of Gedling Borough Council also contains a number of primary schools and secondary schools. The evidence provided to me by the trust shows that some of the schools which have admission authorities other than the local authority were consulted but not all. For example, the feeder schools were consulted but not all other primary schools in the relevant area for which the local authority is not the admission authority. Furthermore, there are five other secondary schools in the relevant area. Two are in the same trust as the school and so would not need to be consulted. I have been given no evidence that the other three secondary schools, which are in different trusts, were consulted.

16. I have been provided with a copy of an email sent to two secondary schools which are not in the relevant area, are in different trusts and are further away than the schools in the relevant area. The requirement is to consult those in the relevant area which is that of Gedling Borough Council although the trust is at liberty to consult others as it deems fit. As I have been given evidence of other schools, feeder schools as above and the two secondary schools, being consulted, I think it is a reasonable inference that where evidence has not been provided to me, then consultation did not occur. The evidence provided to me by the trust does not show that the admission authorities for all the schools in the relevant

area were consulted. I therefore believe that the consultation did not comply with the Code in this regard.

17. The local authority has also said that the emails alerting bodies and people to the consultation did not indicate the consultation period, details of the person to whom comments may be sent, and nor do they draw attention to the proposed changes to the admission arrangements. Paragraph 1.45 of the Code says, *“For the duration of the consultation period, the admission authority must publish a copy of their full proposed admission arrangements (including the proposed PAN) on their website together with details of the person within the admission authority to whom comments may be sent and the areas on which comments are not sought.”* The trust provided a screenshot of the school’s website dated 10 December 2018 which states that there was a consultation on the school’s arrangements for 2020 and provided a link to the consultation document which was the proposed arrangements. The screenshot and the consultation document contained no details of the person to whom comments may be sent or by when. This would therefore not comply with the requirements of the Code.

18. The letter to parents, discussed above, does provide contact details of the person to whom comments could be made and by when. The emails to the feeder schools, as above, do not give details of the person to whom comments could be sent but may have contained the letter addressed to parents. The two emails to other secondary schools welcome contact with the school’s headteacher – this would be a different contact for comments to the one in the letters. The email to the local authority gives the dates of the consultation but gives no named person to whom the response should be made. This is a mixed picture but not all parties required to be consulted by the Code were told whom to contact with comments or by when. The consultation did not comply with the Code in these matters.

19. The local authority provided me with the consultation document which was the proposed arrangements for 2020. The document shows the PAN as 150 but does not explain that this is a change from the PAN of 180 which previously applied or why the PAN has been set at 150 in contrast to previous years. The consultees (aside from the local authority) were not told what change was proposed and no body was told why it was proposed. This is not an effective way to consult.

20. The local authority also said that the minutes of the meeting at which the arrangements were determined did not record that the outcomes from the consultation were fully considered. The local authority responded to the consultation on 5 December 2018 giving its reasons why it could not support the proposed reduction in PAN because of its concerns over the sufficiency of places. The trust met on 21 January 2019 and determined the arrangements. The minutes of the meeting record that the local governing board had agreed the arrangements and that the trust needed to ratify them. There is a record of a question as to whether the PAN had been reduced sufficiently and a response that there were risks to lowering it further. There is no record of any consideration of the results of the consultation. A later meeting of the local governing board on 5 March 2019 noted the objection from the local authority as the only response received but this was after the arrangements had been determined. The minutes of the meeting of the trust, which is the

admission authority, would indicate that the product of consultation was not conscientiously taken into account. This would be a flaw in any consultation process.

21. The consultation did not therefore meet the requirements of the Code as it was for less than six weeks, not all admission authorities in the relevant area were consulted and it was not clear to whom comments should be provided or by when. In addition, the proposed change was not described or a rationale given for the change and the responses to the consultation were not properly considered. I uphold this part of the objection.

Date of determination of the arrangements

22. The next aspect of the objection that I will consider is that the arrangements were determined after 28 February 2019. Paragraph 1.46 of the Code requires that all arrangements must be determined annually and by 28 February in the determination year. As I have discussed above, the arrangements were determined on 21 January 2019 so I do not uphold this aspect of the objection. I do note that the local authority was told that the arrangements had been determined by the local governing board on 5 March 2019 which may have caused some confusion.

Publication of arrangements

23. The third aspect of the objection was that the arrangements were not published on the school's website when determined. This is required by paragraph 1.47 of the Code. In support of its objection the local authority provided a screenshot of the admission's page on the school's website and the arrangements published did not include those for 2020. When I looked at the school's website on 16 May 2019 the arrangements for 2020 were not published. Despite being asked to comment on the objection, the trust has not provided any evidence on this matter. I uphold this aspect of the objection.

Reduction in PAN

24. The last aspect of the objection is to the reduction in the PAN from 180 in previous years to 150 for 2020 which the local authority argues will increase the risk of there being insufficient school places in the area. The local authority has a statutory duty to make sure that there are sufficient school places for local children. In order to inform its planning to meet this duty the local authority forecasts the number of children likely to be seeking school places. The local authority told me that it does this on the basis of planning areas and the planning area for this school includes the school and two other secondary schools (the planning area). I should say, for the avoidance of doubt, that the planning area is not the same as the relevant area dealt with above in relation to consultation. Table 1 below shows the PANs and the number of children allocated places in recent years to the secondary schools in the planning area.

Table 1: number of children allocated places as on national offer day (on or about 1 March) at the secondary schools in the planning area

Secondary schools in the planning area	2017		2018		2019	
	PAN	Allocated	PAN	Allocated	PAN	Allocated
Carlton	170	190	170	190	170	235
Carlton le Willows	226	285	226	300	226	300
Colonel Frank Seely	180	138	180	165	180	171
Total	576	613	576	655	576	706

25. Table 1 shows that more than 150 children were allocated places at the school in 2018 and 2019. This is above the PAN of 150 set for 2020. For 2019, 171 children were allocated places which would be 21 places above the PAN of 150 set for 2020. Significantly more children have been allocated places than the PANs set for the other two schools in each of the three years. I note that the trust is also the trust and admission authority for Carlton Academy and the local authority is investing around £3 million in Carlton Academy to support an increase in its PAN from 170 to 230. The pattern across these three years is one of increased numbers of allocations across the planning area and for the school with 42 surplus places in 2017, 15 in 2018 and nine in 2019 with a PAN of 180 in all three years.

26. However, the number of children initially allocated places at a school on national offer day in March can be (and often is) different from the numbers who are actually admitted in September or who remain in the school. The trust provided me with the number of children in each year group at the school as at 10 December 2018. The number of Year 7 students was given as 153. This would have been the cohort of students admitted in September 2018. This figure of 153 is 12 fewer than the 165 children initially allocated places. While it is higher than the PAN set for 2020 of 150, it is only higher by three. There is an even stronger contrast for those admitted in 2017 as 138 children were allocated places and the number of students in the relevant year (that is year 8) in December 2018 was 114. So, for the cohort admitted in September 2017, the actual number on roll is 66 fewer than the previous PAN of 180 and 36 below the PAN of 150 set for 2020.

27. The trust's figures also show that the total number of students was 641 (excluding sixth form students). This is likely to mean 259 surplus places as the school has capacity for 900 students aged 11 to 16 (based on a PAN of 180 for five years). This is nearly 29 per cent spare capacity.

28. The numbers of students at the school in previous years compared to those allocated places indicates that the school has been undersubscribed compared to its PAN and that more children leave the school than join it as they progress through the school. I could hypothesise that the trust decided to reduce the PAN because of the number of

surplus places but I have not been informed of the trust's reasoning despite my request for its comments. However, the table above shows a growing demand for secondary school places in the area and the local authority's forecasts show this demand increasing. The local authority said that this increasing demand is driven by three main factors:

- 28.1. higher numbers of children moving on from the primary sector;
- 28.2. more children moving into the area because of housing developments; and
- 28.3. the closure of a secondary school removing 900 secondary school places in total.

29. Accordingly, the local authority has been investigating and negotiating ways of expanding the other secondary schools in the planning area in order to meet this demand with the plans for Carlton Academy well advanced and at an early stage for Carleton le Willows Academy.

30. On the basis of the 2018 allocations the local authority extrapolated what would have happened if the PAN for the school had been 150 in 2019. This shows that as the other schools in the area are oversubscribed that the 21 children who would have otherwise been offered places at the school would have been offered places at a variety of schools between five and ten miles from their home addresses. Of course, for 2018 the reality was that by December 2018, 12 of the 165 children allocated places at the school were not on the roll of the school and had been, presumably, admitted to schools elsewhere which, for whatever reason, the parents preferred. Similarly, the local authority informed me that on 11 September 2019, after the start of the school term, 166 children had been allocated places at the school for Y7. This is 16 above the PAN set for 2020 of 150 and five fewer than the 171 children allocated places on national offer day. The evidence shows that a PAN of 150 would not have been sufficient to accommodate all those admitted to the school in 2018 or 2019 and that the alternative places that would have been available to these children would be a considerable distance from their homes. The trust has provided me with no comments on these matters despite opportunities to do so.

31. The forecasts show that in 2020 a PAN of 150 could lead to 22 children who would otherwise be allocated a place at the school being allocated places elsewhere. It is reasonable to assume similar distances, five to ten miles from their home addresses as estimated by the local authority, could have to be travelled by these children to another school with the capacity to admit them. As the school has capacity to accommodate a PAN of 180 it would be unfair to reduce the PAN in these circumstances without good reason. No explanation has been provided to me by any party as to why the PAN should be reduced and so I have been unable to consider whether the reasons for the reduction justified the potential impact. It would, however, be challenging to think of a reason to reduce the number of places when there is evidence that they will be needed, other than an exceptional circumstance such as the loss of buildings which I know has not happened here.

32. Once a PAN has been set for an academy by a trust then no body can object if the same PAN is set in the next or future years. It is therefore appropriate for me to consider future years including but not limited to 2020. The local authority's forecasts show an increased demand for places in the planning area year on year. The problem would therefore become greater in future years and put at risk the local authority's ability to fulfil its duty to make sure that there are sufficient places for local children. I therefore uphold the objection to the PAN being reduced to 150 for 2020.

Other Matters

33. The arrangements for the school include a catchment area and children living in the catchment area have a higher priority than children who do not. When I looked on the school's website I saw that there was a map showing the catchment area but that it was unclear as it was hard to distinguish what the various lines and colourations on the map meant. I raised this with the trust which sent another map of the catchment area. This map was a different shape in some respects to the map on the school's website. I brought this to the attention of the trust but received no clarification and the map of the catchment map on the school's website remains.

34. Paragraph 1.14 of the Code permits the use of catchment areas in oversubscription criteria but says that they **must** be clearly defined. In addition paragraph 14 of the Code requires that, "*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.*" In this case the catchment area is not clearly defined and the arrangements are unclear as the admission authority appear to be using two different maps and one is indistinct. The arrangements do not comply with the Code in this regard.

35. The oversubscription criteria in the arrangements include a priority for brothers and sisters of those attending the school. The Code permits this and says in paragraph 1.21, "*Admission authorities **must** state clearly in their arrangements what they mean by 'sibling' (e.g. whether this includes step siblings, foster siblings, adopted siblings and other children living permanently at the same address or siblings who are former pupils of the school).*" The arrangements include a definition of sibling which says, "*The governors define brother and sister as being those children who share the same biological parents. This includes half-brother or half-sister or legally adopted child living at the same address as the child.*" This is unclear and so not comply with paragraph 14 (above) as the two sentences are contradictory as clearly half-brothers and so on do not share the same biological parents. It is also not clear if those children who share the same biological parents but one of whom lives at a different address to the child would be included in the definition. The arrangements do not comply with the Code in this regard.

Summary of Findings

36. The consultation did not comply with the requirements of the Code as it did not run for the minimum of six weeks, not all other admission authorities in the relevant area were consulted and it was not consistently clear to whom comments on the consultation should be sent and by when. The consultation was also flawed as there was no explanation of the change proposed or its rationale and the evidence indicates that the product of consultation was not conscientiously taken into account by the admission authority.

37. The arrangements were determined by the 28 February 2019 and so comply with the Code in this regard. The arrangements were not published once determined and so do not comply with the Code in this regard.

38. The reduction in the PAN from 180 to 150 would put at risk the local authority's ability to meet its duty to make sure that there are sufficient school places for children in the local area. I uphold the objection to the reduction in the PAN.

39. There are other matters as described above which do not comply with the Code. The Code requires the trust to revise the arrangements to address these matters.

Determination

40. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2020 determined by Redhill Academy Trust for Colonel Frank Seely Academy in the local authority area of Nottinghamshire County Council.

41. 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.

42. 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 that the arrangements must be revised by 31 October 2019 so that the PAN for 2020 is 180 at the deadline for applications for secondary school places for that year.

Dated: 23 September 2019

Signed:

Schools Adjudicator: Deborah Pritchard