



Office of
the Schools
Adjudicator

Determination

Case reference: REF3742

Referrer: Essex County Council

Admission authority: Zenith Multi-Academy Trust for The King John School, Essex

Date of decision: 20 July 2020

Determination

I have considered the admission arrangements for September 2021 for The King John School, Essex in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the published admission number the arrangements do not conform with the requirements. I have also found that 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 in respect of all matters except the test within two months of the date of the determination. In respect of the test it is required to revise the arrangements by 28 February 2021.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Office of Schools Adjudicator (OSA) by Essex County Council (Essex), about the admission arrangements (the arrangements) for The King John School (the school), for September 2021. The date of the objection was 23 June 2020.
2. The referral relates to the published admission number (PAN).

3. When the arrangements were brought to my attention I considered that some of the oversubscription criteria did not appear to be clear and some requirements of the Code had been omitted. The arrangements for selecting some children on the basis of their ability also appeared not to meet the requirements of the Code.

4. The parties to the case are Essex, Zenith Multi-Academy Trust (the Trust), which is the admission authority for the school and the governing board of the school.

Jurisdiction

5. 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 under section 88C of the Act by the Trust on 18 June 2020 on that basis.

6. Admission authorities were required by section 88C of the Act to determine admission arrangements for September 2021 by 28 February 2020. On 28 April 2020 an objection to these arrangements was received from Essex. However, when the objection was received the Trust had not determined the arrangements. Because my jurisdiction is for determined arrangements it was not possible for me to consider the objection at that time. The Trust subsequently determined the arrangements on 18 June 2020 and Essex resubmitted the objection. This was, however, after 15 May 2020 the date by which the School Admissions Code (the Code) requires objections to admission arrangements for 2021 to be made to the adjudicator. As this deadline was missed, the case cannot be treated as an objection. However, as the arrangements have been brought to my attention, I have decided to use the power conferred under section 88I(5) of the Act to consider whether the arrangements conform with the requirements relating to admission arrangements.

Procedure

7. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

8. The documents I have considered in reaching my decision include:

- a) the email and form of objection from Essex dated 23 June 2020;
- b) copies of a minute of the meeting of the Trust at which the arrangements were determined;
- c) a copy of the determined arrangements;
- d) comments from the Trust on the matters raised;

- e) data available on the DfE website; and
- f) a map of the area identifying relevant schools.

The Referral

9. The matter referred to me by Essex was the reduction in the PAN from 350 to 320.

Other Matters

10. When I considered the arrangements as a whole it appeared to me that they did not, or may not, conform with the Code in the following ways:

- a) Paragraph 1.8 of the Code requires that oversubscription criteria are clear. The first oversubscription criterion referred to residence orders which were replaced with child arrangements orders by the Children and Families Act 2014.
- b) The second and third oversubscription criteria refer to a “*priority admission area*” which I take to be what is referred to in the Code as a catchment area. Paragraph 1.14 of the Code requires that catchment areas are clearly defined. I could find no map or other definition of the priority admission area in the arrangements.
- c) The last oversubscription criterion may not be clear because it does not say how proximity to the school is used to give priority for admission.
- d) Paragraph 1.31 of the Code requires that tests for all forms of selection give an accurate reflection of a child’s ability. The test used by the school to select a proportion of applicants is one of verbal ability, this may not give an accurate reflection of a child’s ability as it does not allow a child to show other aspects of their academic ability.
- e) Paragraph 14 of the Code requires that the practices used to decide the allocation of places are fair. There appeared to be no provision in the arrangements to allow a child prevented by unforeseeable and serious events or religious reasons from taking the selection test on the set day to take the test on another occasion. This may not be fair.
- f) Paragraph 2.14 of the Code requires admission authorities to include certain details about waiting lists in their arrangements. This requirement did not appear to be met.
- g) Paragraph 2.17 of the Code requires admission authorities to make clear in their arrangements the process for requesting admission outside of the normal year group. This requirement did not appear to have been met.

Background

11. The school is an academy school for children aged 11 to 18. It is situated in Benfleet, Essex, to the west of Southend-on-Sea. It became an academy in 2011. There are seven other state-funded secondary schools within three miles of the school.

12. The oversubscription criteria for the school can be summarised as:

1. Looked after and previously looked after children
2. Children living in the priority admission area or in an area with the postcode prefix SS with a sibling on roll
3. Children living in the priority admission area for the school
4. Children of staff
5. Up to 15 per cent of the PAN according to the results of a selection test of children with a SS postcode
6. Other children on the basis of proximity to the school.

Consideration of the Case

13. In the referral Essex said that forecasts of the need for secondary school places in Benfleet showed that with a PAN of 320 at the school there would be no spare capacity in 2021 and a shortfall in subsequent years. In 2019 all 350 places available were offered with 15 more children left on the waiting list; there were no other vacancies in the other schools in the area. For 2020, 345 places have been offered at the school at the time of the referral. Essex invested £2 million in September 2014 to enable the school to increase its PAN to 350 from 320 and was concerned that if the PAN was reduced back to 320, further capital investment would be required in another school in order to accommodate all local children at a school within reasonable distance of their homes.

14. The Trust did not question the need identified by Essex and justified the reduction in PAN on the grounds that:

- *“The school is now rated in adequate [sic]*
- *The building was built in 1949. Although the building can accommodate the number of students the school has the corridors are not wide enough and it is having a negative effect on behaviour. This is even more so relevant in light of Covid-19 and being able to adhere to social distancing as the corridors are only 1m wide and the school cannot operate a one way system because of the size of it.*

- *The 6th form now has 452 students. The 6th form only had 230 students when King John's PAN was increased to 350.*
- *The school is finding it difficult to appointed [sic] head of years with 350 students in a year group."*

15. The capacity of an academy is normally set in its funding agreement with the Secretary of State. The funding agreement available on the DfE website is dated 1 April 2011 and records the capacity of the school as being 2000 including a sixth form of 400. This would indicate a PAN of 320 was appropriate at that time ($5 \times 320 + 400 = 2000$). This funding agreement does not appear to have been updated to reflect the building work undertaken in 2014. However, the DfE undertakes an annual survey of the capacity of all state-funded schools in England and the most recent published data from this survey is from 2018 which will reflect the 2014 building work. This shows the capacity of the school to be 2200. The additional 200 places would allow for 30 more children in each of Years 7 to 11 and another 50 students in the sixth form over and above the capacity found in the 2011 funding agreement. A PAN of 350 would therefore appear to be reasonable from this evidence ($5 \times 350 + 450 = 2200$) and there would appear to be demand for this number of places at the school. I will, however, consider the points made by the Trust in more detail.

16. The first argument put forward by the Trust to support the reduction in PAN was the outcome of the Ofsted inspection in February 2019 when the school was rated as *"Inadequate"*. At the time of the previous Ofsted inspection in September 2013, the school was rated as *"Outstanding"*. I have read the most recent Ofsted report.

17. The area in which the school was found to be inadequate was the effectiveness of leadership and management in particular with regard to safeguarding. Personal development, behaviour and welfare was found to require improvement; in all the other aspects of the inspection, the school was found to be *"Good"*. In the section on personal development, behaviour and welfare, Ofsted said *"Pupils say that they feel safe and, despite the extensive school site, that teachers and staff are always visible."* The report also says *"The school provides carefully considered support for a small group of pupils, including those with SEND, who find the size of the site difficult to manage at breaktimes and lunchtimes."* Later in the report pupil behaviour is described as good and *"The school is calm and orderly. Pupils move sensibly around the site and they are clear about staff expectations of their behaviour."* From these comments there would appear to be no link between the accommodation at the school and the Ofsted category which the school is in, nor did Ofsted have concerns about behaviour in the corridors.

18. Even though the Trust did not formally determine its arrangements before 28 February 2020, it had clearly decided to reduce the PAN before COVID-19 restrictions were in place. Furthermore, these arrangements do not come into effect until September 2021 not now.

19. The size of the sixth form could be accommodated within the most recent official record of the school's capacity and I do not understand why reducing the size of the year group by less than 9 percent would help recruit a head of year. I do not find the reasons put forward by the Trust for the reduction of PAN convincing.

20. Paragraph 3.3b of the Code prohibits anyone bringing an objection to an admission authority's decision to increase or keep the same PAN. Therefore, once a PAN is reduced, an admission authority can keep it at the same level in future years. All local authorities are required to ensure that there are sufficient school places in their area. To do so, Essex has invested £2 million to increase the capacity of the school. This increase in capacity has been formally recorded in the annual capacity assessment on which the allocations from the DfE for basic need are based and these new places will not be funded again by the DfE. A PAN of 320 would not have been sufficient to meet local need and parental preference in the area in 2019 nor in 2020 and the information available to the local authority suggests 350 places will be needed to do so in 2021 and beyond.

21. For the reasons set out above I find that the PAN for 2021 should remain at 350.

Other Matters

22. I have noted that the Trust sent me a revised version of the arrangements, but no evidence that this had been formally approved. I have taken this to be an acknowledgement of where it agrees the determined arrangements do not conform with the Code. My comments below refer to the arrangements as determined on 18 June 2020 and are not comments on or endorsements of the revised arrangements sent to me.

The clarity of the arrangements

23. Paragraph 1.8 of the Code requires that oversubscription criteria are clear. The first oversubscription criterion refers to residence orders which were replaced with child arrangements orders by the Children and Families Act 2014. When I raised this matter with the Trust it agreed to update the wording of this criterion.

24. The second and third oversubscription criteria refer to a "*priority admission area*". I take this to be what is referred to in the Code as a catchment area and which the Code defines as "*A geographical area, from which children may be afforded priority for admission to a particular area*". There is no question that children who live in the school's priority admission area do have priority for places at the school. Paragraph 1.14 of the Code requires that catchment areas are clearly defined. I could find no map or other definition of the priority admission area in the arrangements. When I raised this matter with the Trust, it agreed to include in the arrangements a link to a map of the priority admission area on its website.

25. Paragraph 1.13 of the Code sets out the requirements for measuring distance from the school. The last oversubscription criterion simply said: *“Any remaining places will be allocated according to the distance from the child’s home address to the school using safe recognised walking routes calculated by Ordnance Survey software”*. While there was some detail about the measurement of distance as a note to the fourth and fifth oversubscription criteria, the arrangements did not indicate how proximity to the school is used to give priority for admission in the final criterion and so may not be clear. When I raised this matter with the school it agreed to revise the criterion to make it clear that children living closest to the school received priority.

Testing

26. The school is permitted by section 100 of the Act to select a proportion of its applicants by ability. It gives priority on the basis of ability as a fifth oversubscription criterion after children who live in particular areas and their siblings. In some years the point of oversubscription has been reached before the fifth criterion and so that criterion has not been material in the allocation of places. Be that as it may, the test used must still conform with paragraph 1.31 of the Code to be *“clear, objective and give an accurate reflection of the child’s ability”*. The testing must also conform with the requirement of paragraph 14 that *“the practices and criteria used to decide the allocation of places are fair”*.

27. The test used by the school is referred to being a test of *“general ability”* in the criterion itself; however, on the form which parents must complete to enter their child for the test, the test is described as being of *“verbal ability”*. A test of verbal ability does not cover mathematical ability or non-verbal ability and I asked the Trust why it considered just testing one aspect of ability was sufficient to meet the requirement of paragraph 1.31. In response the Trust said *“the test has been in existence for many years”*. The longevity of a test, even one developed by an established testing organisation as this one is, is not sufficient to convince me that it meets the requirements of the Code.

28. I looked at the familiarisation material which parents are directed to on the application form. The parents guide says *“Verbal Reasoning (VR) mainly involves reasoning with words. This includes the production of words, use of words and relationships between words. Some VR item types also involve reasoning with letters and numbers; these question types are not testing mathematics, but use letters and numbers as symbols to predict, for example, a sequence or relationship.”* This is not a test of *“general ability”* in the criterion and it could be difficult for a child with dyslexia or English as a second language to show their ability on this test alone. The company that produces the test also produces tests on non-verbal reasoning, mathematics and English which in itself suggests that the test used does not test all aspects of a child’s *“general ability”*.

29. I am not satisfied that the test used by the school will on its own give an accurate reflection of a child’s *“general ability”* as it only examines verbal reasoning.

30. The test is set for Saturday 3 October 2020. There may be children who for unforeseeable and serious reasons, such as illness, bereavement or failure of transport cannot attend on that day. Other children could be prevented from taking a test on a Saturday for religious reasons. Not to have the safety net of a backup date so such children are able to take the test on an alternative date is in my view unfair and does not conform with the Code. When I raised this matter with the Trust it agreed to provide a second testing date for children unable to attend on 3 October 2020 for good reasons.

Omissions from the arrangements

31. Paragraph 2.14 of the Code says “*Each admission authority **must** maintain a clear, fair and objective waiting list until at least **31 December** of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria.*” The section in the arrangements on waiting lists said “*A waiting list will be kept by Essex County Council until the end of August and thereafter by the school until the end of the first term.*” This does not meet the requirements of the Code. When I raised this matter with the Trust it agreed to revise this section of the arrangements.

32. Paragraph 2.17 of the Code says “*Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.*” The arrangements made no reference to admission outside of the normal age group. When I raised this matter with the Trust, it agreed to add a section to the arrangements to conform with this aspect of the Code.

Conclusion

33. I find that the school has the physical capacity to take up to 350 pupils in each year group and to have a sixth form of 450 students. The school has been expanded at public expense to have this capacity and there is a local need for the places. The reasons put forward by the Trust for the reduction in PAN do not justify the reduction from 350 to 320. I therefore determine that the PAN for 2021 is to remain at 350.

34. I find that the arrangements do not conform with the requirements of the Code in the other ways set out above. Because the Trust failed to determine the arrangements when it was required to do, I take this opportunity to remind it that when it revises the determined arrangements as required by this determination a formal record of the decision should be kept.

35. Paragraph 3.1 of the Code requires admission authorities to revise their admission arrangements within two months of the date of a determination unless the adjudicator specifies an alternative timescale. I do not think that it will be possible for the Trust to put in place an alternative test within two months of the date of this determination, particularly as most of that period falls within the summer holiday. Therefore, I am specifying the date of 28 February 2021 for the Trust to revise that aspect of the arrangements for inclusion in the

arrangements for 2022. All other aspects of the arrangements must be revised within two months of this determination.

Determination

36. I have considered the admission arrangements for September 2021 for The King John School, Essex in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the published admission number the arrangements do not conform with the requirements. I have also found that there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

37. 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 in respect of all matters except the test within two months of the date of the determination. In respect of the test it is required to revise the arrangements by 28 February 2021.

Dated: 20 July 2020

Signed:

Schools Adjudicator: Phil Whiffing