



Office of
the Schools
Adjudicator

Determination

Case reference: ADA4198

Objector: Nottinghamshire County Council

Admission authority: The Elizabethan Academy Trust

Date of decision: 19 September 2023

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 2024 determined by the Elizabethan Academy Trust for the Elizabethan Academy, Nottinghamshire.

I have also considered the arrangements in accordance with section 88I(5) and find there is another matter which does 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 determine that the arrangements must be revised by 6 October 2023.

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 (the objector), about the admission arrangements for September 2024 determined by the Elizabethan Academy Trust (the trust) for the Elizabethan Academy (the school), an academy secondary school for pupils aged 11 to 18.
2. The objector is the local authority for the area in which the school is located. The parties to the objection are the objector and the trust.

Jurisdiction

3. The terms of the Academy agreement between the academy 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 academy trust, which is the admission authority for the school, on that basis. The objector submitted its objection to these determined arrangements on 15 May 2023. 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. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 15 My 2024;
- d. the trust's response to the objection;
- e. further information and submissions provided by the parties.

Background

6. The school is a mixed, non-selective secondary academy school with a sixth form situated in Retford, Nottinghamshire. The current capacity is shown as 1458 and the number of pupils as 1048. At its last Ofsted inspection in May 2018 the school was graded as "Good". The school has a published admission number for 2024 of 230. The school offers up to 23 (10% of the total) places on the basis of aptitude for expressive or performing arts.

7. The oversubscription criteria for **2023** were (in shortened form):

1. All children looked after by a local authority and previously looked after children.
2. Children whose parent is an employee of the Elizabethan Academy.
3. Children who live in the catchment area and have a sibling attending the academy.
4. Children who live in the catchment area.

5. Children who live outside the catchment area but who are attending one of the linked primary schools and who will have a brother or sister at the academy at the time of admission.
6. Up to 10% of the places will be offered to those who can demonstrate an aptitude for the expressive or performing arts.
7. Children who live outside the catchment area but who are attending one of the linked primary schools.
8. Children who live outside the catchment area and who will have a brother or sister attending the academy.
9. Other children who live outside the catchment area.
8. The oversubscription criteria for **2024** are (in shortened form):
 1. Looked after children and all previously looked after children.
 2. Children of an employee of the Elizabethan Academy Trust.
 3. Children who achieve the minimum standards needed for admission on the basis of aptitude for expressive or performing arts. In the event that more than 23 applicants achieve the minimum standard, the 13 [sic] places will be offered to the applicants with the highest scores in the assessment.
 4. Children who attend one of the Elizabethan Academy's Linked Schools.
 5. Children not attending the Elizabethan Academy Linked Schools who will have a sibling attending the Elizabethan Academy.
 6. Remaining places will be allocated to the children who live closest to the school.

The Objection

9. The points raised in the objection are set out in bold below and followed by my findings and consideration below.
10. **Whether the removal of the catchment area and the addition of two more linked primary schools indirectly disadvantages families that live in close proximity to the school but who do not attend one of the named linked primary schools. If so, whether such disadvantage is or is not compliant with the provisions of the Code and the law relating to admissions.**
11. In the oversubscription criteria for 2023 priority, after looked after and previously looked after children and children of staff, was given to children living within the school's catchment area. For 2024 the criteria relating to catchment area have been omitted.

12. In the 2023 oversubscription criteria there were 10 feeder primary schools, for 2024 there are two additional feeder primary schools.

13. The school's former catchment area is split between two separate areas on the map provided by the objector. It is separated by an area which is not currently the catchment area for any school but was presumably formerly the catchment area for Retford Oaks Academy.

14. Retford Oaks Academy is situated very close to the school, 1.3 miles by road according to Google maps. Retford Oaks Academy ceased to include a catchment area in its admission arrangements some years ago, I am told.

15. I assume there was some logic to the school's split catchment area when it was created, but it is difficult to see any overall advantage to admissions across the Retford Planning Area arising from that catchment area now that Retford Oaks Academy does not have a catchment area. In my experience catchment areas work best when a large area, often that of a local authority, is wholly divided into separate catchments, forming a jigsaw in which every address will fall within one catchment area. Often, when some or all secondary schools within the area become academies, and consequently admission authorities independent of the local authority, that pattern breaks down, leaving, as here, a mixture of schools, some with catchment areas and some without. When this happens the underlying logic of catchment areas loses much of its rationale.

16. The twelve primary schools named as feeder schools in the school's 2024 admission arrangements include all the nine primary schools that are within the school's former catchment area plus three outside that area to the northwest. Those three include the two additional feeder primary schools added to the school's admission arrangements for 2024. There are five primary schools which are close to the school but are not feeder schools. All of these lie in what I take to be the former catchment area of Retford Oaks Academy and each of those five is also very close to Retford Oaks Academy. Each is a feeder school for Retford Oaks Academy. There are no other primary schools within three miles of the school. It seems likely that most children living close to the school but not attending a feeder primary will be attending a feeder primary for Retford Oaks Academy and will also be living close to that school.

17. The school have provided information demonstrating its close links to the named feeder schools, as follows:

"The strong links include the following activities:

- **Sporting:** Invitations to sporting events including sports days and days making use of The Elizabethan Academy's facilities including the climbing wall, astroturf and multi-use games areas.
- **STEM+Eng Events:** Science, English and Maths events
- **Workshops:** Expressive Arts events: music, drama and art workshops
- **Shared Staffing:** We use service level agreements with the linked schools to support with the provision of specialist staffing which they would otherwise be unable to provide. For example computing, dance, sporting staff.

- **Leadership meetings:** Half Termly with the head teachers
- **Training:** Joint staff training days”

18. I am satisfied that this demonstrates that the school has significant links to the named feeder schools. The objector makes specific reference to the named feeder schools outside the school’s former catchment area. With regard to Misson Primary school, a community school, the objector states that it was not aware of the trust’s proposal to adopt it as a feeder school prior to the consultation. However, I find that the consultation gave the objector proper opportunity to comment on the proposal. The objector also queries whether the governing body of the Misson Primary School was consulted. The school inform me that the consultation document was sent to local schools, presumably including Misson Primary School.

19. The objector also points out that the diocese was not informed of the proposals as part of the consultation. The school have informed me that this was an error, stating: “Following the Nottinghamshire County Councils queries, the Elizabethan academy reached out to the diocese who confirmed they were supportive of the inclusion within the arrangements”. The representative of the diocese, in response to my query said “On 10th January 2023 I notified NCC’s Admissions team...that the Diocese would not be objecting to the Elizabethan Academy’s proposal for The Primary School of St Mary and St Martin to be named as a linked primary school in their arrangements, as this change did not appear to disadvantage pupils at St Mary and St Martin”.

20. I first make the point that there was no specific legal requirement on the school to consult the diocese – specific requirements to consult religious bodies arise only when an admission authority of a school with a religious character is proposing to change its arrangements. That said, I do consider it would have been courteous and sensible to have consulted the diocese and the school has said that the fact it did not was an error. I do not find that the consultation was significantly flawed or that the outcome would have been any different had the diocese been included in the original consultation.

21. In response to my query regarding the rationale for including feeder primary schools from outside the school’s former catchment area, the school state: “It was at the request of the primary school heads who were seeking greater integration and collaboration in the areas listed above. It was also requested by parents of children in those schools”.

22. I also asked the school to explain the reason for not including as feeder primary schools the primary schools which are closer to it than some which are included. The school responded:

“Most are already previously part of an adjacent family of linked schools including a secondary academy. Some are part of Multi-Academy Trusts. While the adjacent secondary academy does not have a catchment area we understand it retains strong links with those schools.

The Elizabethan Academy has offered support to other local primary schools and a number have taken up this offer, but they are not currently seeking to extend their collaboration as is the case for the linked schools.

Examples of the support offered to non-linked schools include: the release of a number of senior leaders to support during a transitional phase to ensure the continuation of quality education during a challenging period for a local primary school; provision of ICT support.”

23. The general principle regarding the choice of admission arrangements is set out in paragraph 1.9 “It is for admission authorities to formulate their admission arrangements” and paragraph 1.10 of the Code “It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances”. I do not find that the omission of the catchment area and the inclusion of two further feeder primary schools in the school’s admission arrangements contravenes any provision of the Code, including paragraph 1.5 which states “The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds”. Any change to an oversubscribed school’s oversubscription criteria is likely to lead to a different intake, it is in the nature of oversubscription criteria that some pupils will not gain places at a preferred school. These changes do not affect the overall number of secondary places available locally and consequently will not add to or diminish the overall pressure on places.

24. I do not find that children living close to the school are unfairly disadvantaged by the omission of a catchment area and the addition of two more feeder primary schools for the school. I do not uphold the objection to the omission of a catchment area and the addition of two additional feeder primary schools to the school’s admission arrangements.

25. **Whether the provisions for the priority given to staff employed at the school meet the requirements of paragraphs 1.39 and 1.40 of the School Admissions Code (the Code);**

26. I find that the wording of the school’s oversubscription criterion 2 reflects the wording of the Code. Further description of the groups of staff to whom it would apply would only be required if some groups of staff were to be included but others were not. In this case the priority applies to the children of all staff who meet one or other of the two criteria set out in the Code.

27. I do not uphold the objection on this point.

28. **Whether the wording of oversubscription criterion 3 “In the event that more than 23 applicants achieve the minimum standard, the 13 places will be offered to the applicants with the highest scores in the assessment” is clear.**

29. The school have acknowledged that this is a typographical error and that, where it states “13” it should be “23”. The school have said it will correct the error and I consequently make no finding on this point.

30. **Whether the wording of the paragraph headed “Waiting List” is clear and whether the provisions are compliant with the Code.**

31. The paragraph on waiting lists reads:

“In the event of over subscription, the school will operate a waiting list. A child’s place on the waiting list will be determined by the above criteria. That place may go up or down depending on whether places become available or if late or mid-term applications are received, each added child to the school’s waiting list will require the list to be ranked again in line with the published oversubscription criteria. Looked after children or previously looked after children allocated a place at the school in accordance with a Fair Access Protocol will take precedence over those on a waiting list. The governors of the school will maintain waiting lists in partnership with Nottinghamshire County Council until 31 December 2023. Once the co-ordinated scheme is closed, the waiting list will remain open but will be administered by the governors of the school. The waiting list will be maintained until the end of the autumn term of the year of admission.”

32. The school acknowledge that the date is in error and should be 31 December 2024. The final two sentences are not clear. It is fine for a waiting list to be maintained by the school after 31 December 2024 but the final sentence suggests that this waiting list will also end at the end of the autumn term 2024, which does not make sense and so is unclear, contrary to the requirements of paragraph 14 of the Code. The wording of this paragraph needs amendment in order to be clear. Consequently, I uphold the objection on this point.

Other Matters

33. I have exercised my powers under section 88I of the Act to consider the arrangements as a whole and whether they conform with the requirements relating to admissions. Having considered the arrangements as a whole the following matter does not conform with requirements of the Code.

34. Part 7 of the admission arrangements “Admission of children outside their normal age group”. The second sentence “In addition, the parents of a summer born child (1 April to 31 August) may choose not to send that child to school until the September following their fifth birthday and may request that they are admitted out of their normal age group – to reception rather than year 1” applies only to primary schools and I find it is unclear in a secondary school context, contrary to the requirements of paragraph 14 of the Code.

Determination

35. 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 2024 determined by the Elizabethan Academy Trust for the Elizabethan Academy, Nottinghamshire.

36. I have also considered the arrangements in accordance with section 88I(5) and find there is another matter which does 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 within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 6 October 2023.

Dated: 19 September 2023

Signed:

Schools Adjudicator: Thomas Brooke