



Young People's
Learning Agency

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www.ypla.gov.uk

12 September 2011

Dear

Re: Objections to the determined admissions arrangements for The Cotswold School Academy

Objector -

Further to the acknowledgement your objection to the determined admissions arrangements for The Cotswold School Academy for the 2012/13 admission year I am writing to inform you that the Young People's Learning Agency (YPLA) has reached a decision on behalf of the Secretary of State for Education.

The YPLA is required to seek the advice of the Office of the Schools Adjudicator (OSA) before reaching any decision on objections to Academies' determined admissions arrangements. This enables the YPLA to draw on the OSA's expertise in admissions matters. The YPLA then reaches a judgement based on all the evidence and issues a decision to all parties on behalf of the Secretary of State for Education.

The YPLA has considered all the relevant material including objections received and the OSA's Recommendation and believes the advice of the OSA to be appropriate. The YPLA has instructed the Academy Trust to implement in full the following Recommendation with regard to The Cotswold School Academy's arrangements for the 2012/13 admission year:

Recommendation

In response to the Secretary of State's request for advice under section 25 of the School Standards and Framework Act 1998, I recommend that the Secretary of State uphold the objection to the admission number determined by governing body of The Cotswold School for admissions in September 2012. I recommend that that the admission number for admissions to Year 7 should be 187.

The OSA's full advice to the Secretary of State, setting out the objections and the Adjudicator's response to them, is enclosed for your information.

I am also copying this letter to the Chair of Governors of The Cotswold School Academy.

Yours sincerely

Ruth Bullen
Director of Academies Operations

Cc Lady Dunrossil Chair of Governors

RECOMMENDATION TO THE SECRETARY OF STATE

Case reference: ACA/000016

Objector: Gloucestershire County Council

Admission Authority: The governing body of The Cotswold School

Date of decision: 18 August 2011

Recommendation

In response to the Secretary of State's request for advice under section 25 of the School Standards and Framework Act 1998, I recommend that the Secretary of State uphold the objection to the admission number determined by governing body of The Cotswold School for admissions in September 2012. I recommend that that the admission number for admissions to Year 7 should be 187.

The referral

1. Gloucestershire County Council (the Council) the local authority (LA) has referred an objection to the Secretary of State about the admission arrangements (the arrangements) determined by the governing body of The Cotswold School (the School), an academy for 11-18 year old girls and boys, for September 2012. The objection is to the admission number (AN) of 200.

Jurisdiction

2. Jurisdiction in this matter rests with the Secretary of State for Education, acting through the Young People's Learning Agency (YPLA). The arrangements were determined by the governing body of the School as its admission authority. The Council submitted its objection to the YPLA and in accordance with section 25 of the School Standards and Framework Act 1998 (the Act) the Secretary of State, via the YPLA, requested advice from the Office of the Schools Adjudicator (OSA) on 12 July 2011 and the case was referred to me.

Procedure

3. In considering this matter I have had regard to the relevant legislation, guidance and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
 - a. the admission arrangements determined by the School;
 - b. the Council's objection, supporting material and subsequent correspondence;
 - c. the School's submission to the YPLA concerning its change to its AN, supporting papers and subsequent correspondence;

- d. the LA's booklet for parents seeking admission to schools in the area in September 2011;
 - e. maps of the area identifying relevant schools and the locations from which pupils attend the School;
 - f. information on the School's website concerning admissions; and
 - g. the predecessor school's Ofsted inspection report of 2009.
5. I have also taken account of information received at the meeting I convened on 20 July 2011 at the school and subsequently.

The Objection

6. The Council has referred an objection to the Secretary of State about the School's decision to increase its admission number from 166 to 200 on the following grounds:
- a. the Council supports an increase, but considers an increase of 34 places to be too excessive to meet demand;
 - b. population projections show that numbers in the Cotswold District will decline from 4957 in 2011 to 4647 in 2015. Current forecasts indicate that the demand for places will not exceed 186 in the next seven years;
 - c. the pressure for places for children in the catchment area has been exacerbated by the recruitment of children out of catchment/county and the siblings that follow;
 - d. increasing cases of local children not being able to be admitted causing additional financial burden for the Council in transporting children to schools much further away; and
 - e. the School did not meet fully its obligations for consultation on its arrangements.

Background and Consideration of Factors

7. The School is located in Bourton-on-the-Water and is the only secondary school in the town. It serves the town and surrounding area and has a catchment area covering this area with an additional joint catchment area with The Chipping Campden School that is between and at a distance from both schools. The School changed its status from a Foundation School to an Academy on 1 September 2010.
8. As an academy the school's admission arrangements are those agreed in its funding agreement unless a change is requested and agreed as stated in the funding agreement. The document headed "Annex B REQUIREMENTS FOR THE ADMISSION OF PUPILS TO THE COTSWOLD SCHOOL ACADEMY" says in the first paragraph "This annex may be amended in writing at any time by agreement between the Secretary of State and the Academy Trust."
9. The guidance I obtained on 19 July 2011 from the YPLA says, "No changes to an Academy's admission arrangements can be made without first seeking the YPLA's approval." In a footnote it says "If there are objections, the Schools Adjudicator will consider the case and make a detailed recommendation to the YPLA, which it will follow

or refer to the Secretary of State for decision.” As the admission number is part of a school’s admission arrangements the School needed to seek approval from the YPLA by sending at any point between 15 April 2011 and 30 June 2011 its full determined arrangements with any proposed changes highlighted and include any evidence of the need for change, effects of it, and views of interested parties. This the School did not do. When questioned at the meeting I held the School said the YPLA knew of its intention. Such information does not in my view suffice to meet the guidance. The School asserts that the YPLA should have informed it of the process it should follow, but I am of the opinion that the onus is on the School to seek that advice so that it can meet the terms of its funding agreement.

10. The copies of correspondence I have do indeed indicate that the YPLA was aware of the School’s wish to increase its AN, but there was no properly argued case for the increase. Thus to set matters straight I suggested at the meeting I convened that despite the passing of the deadline of 30 June, the School should forthwith set out its case and write formally to the YPLA seeking the change to its AN. The Council agreed with this action and the School copied its formal request to the Office of the Schools Adjudicator.
11. Since the meeting at the School I have received a copy of advice from the Department for Education (DfE) that does not require an academy to seek approval from the YPLA for a change to its admission arrangements made during the normal consultation and determination process. There appears to have been differing advice available depending on where an academy or other interested party sought guidance on the procedures to be followed. In this case the document prepared by the School following the meeting may not have been needed by the YPLA, but as there is an objection to the School’s arrangements the governors’ arguments for increasing the School’s AN are required and the document fulfils this purpose.
12. The School consulted on its arrangements for admissions to Year 7 in September 2012 such that the arrangements were those currently in force with the exception of the change to its AN increasing it from 166 to 200. In the responses to the consultation that I have seen is a strong objection to the increase in AN from The Chipping Campden School, and correspondence between the School, Council and YPLA that show the Council’s objection to the AN of 200, but not to there being some increase.
13. On consultation and whether the process complied with the Code, paragraph 2 of the document cited above concerning admission arrangements for the School requires the academy trust to act in accordance with all the relevant provisions of the Code and the School Admission Appeals Code. The School says the governors agreed a proposal to increase the AN in November (2010) and began the necessary procedures of consultation as set out in paragraphs 1.26, 1.27 and 1.28 of the Code. The School also says it consulted the OSA as to what was reasonably required for consultation. There appears to have been a misunderstanding or an error in the process between the School and LA over ensuring all schools that should have been consulted were consulted. The Chipping Campden School was not initially included, but did find out about the proposed change and wrote to the School objecting. For the future the School will need to ensure that all those specified in the Code who should be consulted are consulted as it is ultimately the responsibility of the School as the admissions authority to meet the requirements of the Code.
14. The substance of the Chipping Campden School’s objection was that an increase in the School’s AN would be at the expense of its admissions. The School responded that Chipping Campden School is oversubscribed and that the number of pupils from that

school's catchment at the School is very small. Compared with the number of pupils from outside the School's catchment and Chipping Campden's catchment the number does appear to be small, but if the AN were to increase to the extent that the School wishes it is quite possible that at least some of the additional pupils would be from Chipping Campden's catchment. Of itself this is not a reason to recommend a number lower than 200, but the justification for 200 needs to be set out very clearly with supporting data.

15. The grounds provided by the School for its increased AN are to:

- a. meet the requirement in the Code paragraph 1.19 to determine a higher AN after exceeding its AN by more than a total of 26 children above their admission number in any three year period;
- b. make places available to meet the demand for the School based on its assessment of need which disputes the forecasts of the Council taking into account:
 - i. the movement of local pupils out of the independent sector into the School;
 - ii. the popularity of the School causing families to move into the area to obtain a place at the school;
 - iii. the social housing movement of families out of major towns into villages such as Bourton-on-the-Water;
 - iv. the continued building of additional housing within the catchment area which has caused and will continue to cause (300 houses to be built between 2012 and 2015 in Upper Rissington) - a significant uplift on actual pupil numbers as opposed to forecast figures based on historical data;
- c. provide places for all looked after children, siblings of pupils at the school and children from the catchment area and also ensure the School does not exceed its AN, can meet any legitimate in year appeals and to meet its AN it will not need to fill with out-of-catchment pupils;
- d. take into account its net capacity assessment and indicated admission number; and
- e. have six classes of 30 and a special needs group of around 20.

16. The Code at paragraph 1.16 requires an admission authority to set an AN for each "relevant age group"; and, at paragraph 1.17, to set the AN with regard to the capacity assessment of the school. The school has admitted above its AN in recent years, and to the extent that the admissions authority must, in accordance with paragraph 1.19 determine a higher AN.

17. The LA agrees that the previous AN of 166 was too low. In order to accommodate what it describes as the peak demand for places across the Cotswold/Stroud District the LA says it was necessary for the School to admit an extra 30 pupils in 2010 which is still below the School's determined AN and in the other very recent years there was no reason to admit more than seven to 10 pupils above its AN to provide places for children who live in the

catchment area. But the School has admitted more pupils than requested by the LA.

18. The LA accepts that its projections of the demand for places have not been as accurate as is desirable and therefore I am not surprised that that School has lacked confidence in the projections. To try to achieve more accurate forecasting the methods used have been modified taking into account advice from experts in forecasting techniques. Population projections show that the number of children of secondary school age in the area will decline from 4957 in 2011 to 4647 in 2015. Using all the data available to it including patterns of transfer from primary schools and the number of pupils in those schools now, from independent schools and information about new building in the catchment and likely completion dates the LA predicts that an AN of 186 for the School would enable it to accommodate all the pupils in its catchment in 2012 and beyond. The LA argues that the School's recruitment of pupils from outside its catchment has exacerbated problems for pupils in or new to the area because of the priority afforded siblings subsequently whether they are within or from outside the catchment with some also out of the county. Furthermore, recruiting pupils to the extent the School has in recent years has meant that families moving into the area have not been able to secure a place in other year groups nor through cases considered under fair access protocols. The effect of this has been for the LA to have to provide transport to a more distant school outside the child's community and at considerable expense to the LA.
19. In planning for future places the LA is concerned that if the School increases its AN to 200 now when in due course the new houses are completed inside the School's catchment children will not be able to secure a place at the School.
20. The School argues that the LA's forecasts have considerably underestimated demand and asserts this has been by between 7% and 14% over the last five years. It also says that while the LA's planners claim that changes to their modelling are improving the accuracy of their forecasts the model still relies on extrapolation. It says the model does not take into account the increased popularity of the School nor the economic climate or that the numbers moving into its catchment are higher than in previous years and are increasing. It also says, "Following the closure of RAF Lyneham, for example, 20% of the RAF operations will be from RAF Brize Norton by 2012, increasing demand for school places in our area. We believe therefore that the GCC model continues to underestimate future demand."
21. The LA, as stated above, accepts that it has underestimated the number of places, but this does not mean that the School's view of the level of underestimation is correct as in its calculations it appears to include all pupils joining the School, those additional pupils the LA asked it to take from within its catchment and others it accepted itself. The School says it has in its 2010-2011 cohorts five, six, four, six and one pupil respectively in its Years 7 to 11 from the Chipping Campden catchment area. According to the distribution maps provided by the LA of the locations from which pupils attend the School there are significantly more pupils from other out of catchment/county areas than from the Chipping Campden catchment area. Taking the Chipping Campden and other out of catchment pupils the number of out of catchment children is not as small as the School asserts. Although the School provided the Chipping Campden data it is silent on the numbers from other out of catchment/county areas, the numbers said to be moving into the area or the numbers recruited from independent schools.
22. Although I note the references to the changes at RAF Brize Norton, the School has not indicated what its predictions are for the number of children who move as a result of the new deployment who will be resident in its catchment area and need a place in

September 2012. While it is very important indeed than any children affected by the move have a school place, apart from Brize Norton being in Oxfordshire and thus that authority will have been planning for school places, it is some 18 miles from the School. I have not been given any firm evidence to support an increase in the School's AN because of changes at Brize Norton. The School has not for example provided any evidence about children from families already stationed at Brize Norton seeking or obtaining a place at the School and whether such children live in or out of the School's catchment.

23. The School says that with an AN of 200 it will be able to meet all applicants in the first three of its admission criteria, by which I take it to mean its oversubscription criteria. It says this will mean it does not need to exceed its AN, can meet any legitimate in year appeals and will not need to fill with out of catchment pupils. The wording causes me to ponder on what the School is really trying to do with an AN of 200. The evidence is that it has exceeded its AN beyond the extra places requested by the LA and has recruited out of catchment pupils so that if they in turn have a younger sibling that sibling has a higher priority than a child without an older sibling but living in the catchment area. Having exceeded its AN to the extent it has it then has not had space for in year admissions and by including the word "legitimate" seems to raise questions about its commitment to the local fair access agreement. As to saying it would not exceed its AN, I regret that I do not feel any degree of confidence that this would be the case. The action of the School this year in simply admitting a group of pupils without following the proper appeals process and leaving pupils on the waiting list with a higher priority for a place than those it admitted without holding an appeals hearing does not inspire confidence that the School would keep to its AN of 200.
24. A further matter to consider is the School's net capacity assessment (NCA) and its indicated admission number (IAN) which support an increase in the AN above 166. The most recent NCA which takes into account four new classrooms at the School give an IAN for September 2011 of 187. The Code at paragraph 1.17 says an admission authority **must** set its AN with regard to the capacity assessment for the school. It says that an AN may be fixed lower than the capacity assessment and what the admission authority should do in those circumstances. The paragraph goes on to say that an admission authority can also set an AN higher than indicated by the capacity assessment. The School reports that since the last capacity assessment it has secured funding from the YPLA for an additional six classrooms and these should be ready by April 2012 which will enable it comfortably to accommodate an AN of 200.
25. Apart from saying there will be an extra six classrooms, the School has not elaborated the reasons why the extra space is being provided, whether to alleviate existing constraints for all age groups or for specific age groups or to expand the School further. I consider that the space needs to be completed and then assessed as part of a capacity assessment before it is taken into account for Year 7 admissions.
26. On arguing against the AN of 186 proposed by the LA the School says an AN of 200 is needed to allow it to organise its classes so that it has six classes of 30 and a special needs class of no more than 20. It says that an AN of 186 would mean six classes of 31. It is for a school to organise its classes, but there is nothing to say that a class must be of 30 pupils; there are other combinations that could accommodate 186 pupils. The School has demonstrated its capacity to accommodate differing numbers of pupils as numbers vary in each of its current year groups and it has made the provision it thinks best for pupils who have special needs. I am not persuaded that an AN of 200 is necessary for class organisation to be satisfactory.

27. Although rather surprising, the School has not referred to paragraph 1.22 of the Code in putting its case for an increased AN. I have considered nevertheless whether and to what extent I should take into account what the Code says about the expansion of schools. At paragraph 1.22 the Code says, "Local authorities and the Schools Adjudicator **should** have regard to the presumption that proposals to expand successful and popular schools, except grammar schools, **should** be approved. The existence of surplus capacity in neighbouring schools **should not** in itself be sufficient to prevent expansion, but the local authority **should** consider how they can take parallel action to remove surplus places."
28. The case for increasing the School's AN has not been made specifically on grounds of the school being a successful and popular school, but it is undoubtedly both successful and popular and I believe I must have regard to the presumption in favour of expansion. My difficulties are that the School has admitted above its AN and the LA has asked the School to take additional pupils and both agree an AN of 166 is too low so an expansion is needed. The LA has changed and improved its forecasting and says an AN of 200 is too high. The School does not accept that the forecasting is any more accurate than previously, but has not provided data or clear evidence to support its view that 200 is the right number to provide for children in its catchment area and subsequently for in year admission of new arrivals in the area or as part of fair access arrangements. The School needs to give data to show what its view is of the number of children from the new houses that it cites that will require a place in 2012 and how it differs from the LA's view as the new houses in question will not all be completed and occupied for admissions in 2012. It could also have stated the number of children already at the School who live in and out of the catchment and who have siblings who are likely to apply for a place in Year 7 in 2012 and by doing so established how many places are likely to be needed for siblings and how many will be available for other children, first from those in the catchment. The School does not give its forecast for the number of children who may seek a place in response to what it described as the economic situation, but it ought to make some attempt to do so using as a minimum any evidence from the last year or two and how it thinks the trend may continue.
29. The School suggests that as in its view the LA's forecasts have been too low by what it considers to be between 7% and 14% the addition of 7% of places to the LA's forecast for 2012 would be right, which happens to be 199 places. This ignores the fact that the number the School has admitted which it uses to arrive at these percentages has meant recruiting pupils from beyond the catchment and for this year at least not following the correct procedures on appeals. The IAN is 187 and until such time as a new capacity assessment is done that properly assesses the accommodation available for pupils in Years 7 I have not been provided with compelling evidence that supports a higher number.
30. The School and the LA ought to look at the need for places in the School's catchment beyond 2012 and the School needs to make provision to enable those moving into the area to obtain a place and to take its proper part in the admission of pupils under the fair access protocol. In due course the School will need to assess its arrangements against the new Code that is expected to apply to arrangements for 2013 admissions and the new Code relating to appeals.
31. The case for 2012 rests on whether on the basis of the information I have been given I should uphold the objection to the AN of 200 and if so recommend a different AN. I have not been persuaded that there is evidence to support an AN of 200, but I agree with the LA and the School that the former AN of 166 is too low. While the School does not accept the LA's forecasting for the number of places needed it has not provided clear

evidence for having 200 places that would make it right to recommend an AN of 200 for 2012. The question therefore is what should the AN be for September 2012. The LA forecast of 186 and the IAN of 187 suggest I should recommend that the AN be 187 which gives due weight to the School's capacity assessment.

Conclusions

32. For the reasons given above, I have concluded I should recommend that the objection is upheld and that the AN for admissions to Year 7 in September 2012 should be 187.

Recommendation

33. In response to the Secretary of State's request for advice under section 25 of the School Standards and Framework Act 1998, I recommend that the Secretary of State uphold the objection to the admission number determined by governing body of The Cotswold School for admissions in September 2012. I recommend that that the admission number for admissions to Year 7 should be 187.

Dated: 18 August 2011

Signed:

Schools Adjudicator:
Dr Elizabeth Passmore