



Office of
the Schools
Adjudicator

Determination

- Case references:** ADA3494, 3506, 3536, 3542 and 3563
- Objectors:** Two parents, the governing board of St Nicholas Church of England Primary School, Harpenden, the Church of England Diocese of St Albans and Hertfordshire County Council
- Admission authority:** Scholars' Education Trust for Sir John Lawes School, Harpenden, Hertfordshire
- Date of decision:** 8 July 2019

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection made by Hertfordshire County Council to the admission arrangements for September 2020 determined by Scholars' Education Trust for Sir John Lawes School, Harpenden, Hertfordshire, in respect of admission to the sixth form. I do not uphold any of the objections relating to the naming of a feeder school.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), five objections have been referred to the adjudicator about the admission arrangements (the arrangements) for September 2020 for Sir John Lawes School (the school), an academy school for pupils aged 11 – 18, which is part of the Scholars' Education Trust (the

trust), a multi-academy trust responsible for five schools. All of the objections concern the priority given to pupils applying from Harpenden Academy, a primary school within the Scholars' Education Trust, which is named as a feeder school. The objection made by Hertfordshire County Council also concerns the arrangements relating to admission to the sixth form.

2. The local authority (LA) for the area in which the school is located is Hertfordshire County Council (the LA), which is also an objector and is a party to the objection. Other parties to the objection are the other objectors, that is, two parents, St Nicholas Church of England Primary School and the Church of England Diocese of St Albans (the diocese), as well as the trust and the local governing board of the school.

3. Responses to the objections and to my queries were made collectively by the headteacher, on behalf of the school, the chair of the governing board and the chair of trustees of the Scholars' Education Trust. I have referred throughout this determination to these as the responses of "*the trust*" as the trust is the admission authority for the school.

Jurisdiction

4. The terms of the Academy agreement between multi-academy trust (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 on 12 February 2019 by the trust board, which is the admission authority for the school, on that basis. The objectors submitted their objections to these determined arrangements between 5 March 2019 and 12 May 2019. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

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

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

- a) the objectors' forms of objection, supporting documents and subsequent correspondence;
- b) the admission authority's responses to the objections and supporting documents;
- c) information supplied by the LA, at my request, indicating the allocation of secondary school places in the area and other statistical analyses;
- d) a map of the area identifying relevant schools;

- e) information about the consultation on the arrangements that took place prior to their determination;
- f) copies of the minutes of the meeting at which the Scholars' Education Trust determined the arrangements and of other meetings when the arrangements were considered; and
- g) a copy of the determined arrangements.

The Objections

7. All five of the objections relate to the same matter. In the arrangements for September 2020 the trust has added an oversubscription criterion that gives priority to pupils who attend Harpenden Academy, a primary school for which the trust is also responsible. This is the only feeder school that appears in the oversubscription criteria. Attendance at Harpenden Academy gives pupils a higher priority for a place than pupils for whom Sir John Lawes School is their closest school. Some of the objections use arguments that are very similar; others make particular points about the same matters. The objectors maintain variously that the arrangements do not comply with paragraphs 1.8 of the Code, which requires that oversubscription criteria "**must be reasonable, clear [and] objective,**" and paragraph 1.15, which requires that "*selection of a feeder school or schools as an oversubscription criterion must be transparent and made on reasonable grounds*". In addition, two of the objectors say that the consultation undertaken by the trust before it determined the arrangements did not meet the requirements relating to consultation that are set out in paragraphs 1.42-45 of the Code.

8. The LA's objection also lists several ways in which it believes that the arrangements for the admission of external students to the school's sixth form do not comply with the requirements of the Code.

Other Matters

9. The operation of what is described in the arrangements as a "*Tie-Break*" did not appear to me to be set out clearly, as required by paragraph 1.8 of the Code.

Background

10. The school is located in the town of Harpenden, where there are currently two other state-funded secondary schools: Roundwood Park School and St George's School. A fourth secondary school, Katherine Warington School, will open in September 2019. Katherine Warington School was not included in the LA's co-ordinated admission scheme for admissions to year 7 (Y7) for 2019 but will be included for 2020, the admission year with which I am concerned. The Published Admission Number (PAN) determined for admission at Y7 to Sir John Lawes School for September 2020 is 196, which is unchanged from 2019. The school was oversubscribed for admission to Y7 in September 2019; the parents of 270 children made it their first preference.

11. The oversubscription criteria (known as “*Rules*” in Hertfordshire) for admission to Y7 at the school in September 2020 can be summarised as follows:

1. Looked after and previously looked after children.
2. Children with medical or social needs (including children adopted having been previously looked after abroad).
3. Siblings of children at the school.
4. Children of staff.
5. Children who attend Harpenden Academy.
6. Children who live in the priority area for whom the school is their nearest non-faith, non-partially selective, co-educational school (I abbreviate this to “*nearest school*” in this determination).
7. Other children who live in the priority area, ranked in order of their distance from the school.
8. Children who live outside the priority area who live nearest to the school.

The fifth oversubscription criterion did not appear in the arrangements for admission in September 2019. The admission authority undertook a period of consultation before deciding to include it for admission in September 2020.

12. The “priority area” referred to in the arrangements is one of 12 across the county of Hertfordshire. It includes Harpenden and the neighbouring city of St Albans. All of the schools in Harpenden lie within the same priority area.

13. In the determined arrangements, immediately under the oversubscription criteria, there is a section headed “*Tie-Break*”, which, for ease of reference, I quote in full at paragraph 62 below, when I consider it.

Consideration of Case

14. The new priority for pupils attending Harpenden Academy is the subject of all of the objections. The trust explains that it was approached by the Department for Education to assist Harpenden Academy’s predecessor school when it was in difficulties. That school subsequently became part of the multi-academy trust. Harpenden Academy and Sir John Lawes School, the trust says, “*share exactly the same values and ethos and already work closely together in many areas.*” Joint activities include curriculum planning, governor training and students working together in music and sport. The trust believes that the shared work across the schools brings “*positive educational benefits to the children of Harpenden Academy.*” The two statements below show how the trust justifies the addition of Harpenden Academy as a feeder school:

“We note that government policy is to promote the sharing of values, principles, learning and resources within Multi-Academy Trusts. The Trust sees this change in admission arrangements as a logical progression of the close collaboration that has developed already between the two schools and one that can only benefit the children of Harpenden Academy.”

“Scholars’ Education Trust feel it is beneficial to the students within these two schools to have the reassurance of continuity and stability of education and opportunity, should they wish it.”

15. The objectors argue that this change to the priority for places at Sir John Lawes School means that the school’s admission arrangements do not comply with paragraph 1.15 of the Code, as they believe the selection of Harpenden Academy was not *“transparent and made on reasonable grounds.”* Several objectors also say paragraph 1.8 of the Code is breached as the oversubscription criteria are not *“reasonable, clear [and] objective.”* Both of the parents who have objected describe the change to the arrangements as unfair. Paragraph 14 of the Code says that *“admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair.”*

16. The objectors collectively advance a large number of arguments, some of which are common to all or most of the objections. Having considered each objection, I summarise below the key points made in the objections taken together, broadly in the order in which I address them. The list excludes those points relating to the consultation and the sixth form arrangements, which I will consider later:

- a) The trust does not provide any evidence or argument for why common values and ethos between a primary and secondary are educationally or otherwise beneficial. Almost all primary and secondary schools have slightly differing values and ethos but this does not appear to be detrimental;
- b) Children who attend primary schools located closer to Sir John Lawes School than Harpenden Academy is, and for whom it is their nearest secondary school, will be unreasonably and unfairly disadvantaged as children who may live significantly further away will have a higher priority for places;
- c) The change could lead to an increase in parents driving their children to school and potentially in school transport costs;
- d) The trust has said that *“Harpenden Academy will only accept in year admissions within Year 5 and 6 where it is considered to be a proven educational benefit for the child to do so.”* This is contrary to the Code;
- e) The arrangements *“deliberately bypass children living closer to the school”*. This is unfair, and contradicts schools admissions guidance;
- f) Although it is not fully subscribed, Harpenden Academy has a PAN of 60. In due course, giving priority for a place at Sir John Lawes to such a large number of children, who may live further afield, will dramatically restrict the availability of places for children who live nearer the school and could lead to children not being allocated a place at a Harpenden secondary school;
- g) Parents who wish their children to attend Sir John Lawes School may feel under pressure to seek a place at Harpenden Academy, or to transfer their child there

from their current primary school, in order to stand a better chance of a place. This is likely to have a damaging impact on other local primary schools as there are surplus places in Harpenden;

- h) One of the reasons given by the trust for the change is to increase the roll at Harpenden Academy so that it becomes financially viable. It is not reasonable to seek to promote the growth of one school to the probable detriment of other primary schools in the area and is contrary to one of the objects of the Scholars' Education Trust, that is, to "*advance for the public benefit education in the United Kingdom*"; and
- i) Providing the pupils of Harpenden Academy with continuity of education will result in a loss of continuity of education for pupils of other primary schools in Harpenden, particularly those living closer to Sir John Lawes School than Harpenden Academy.

Was the selection of Harpenden Academy transparent and made on reasonable grounds?

17. I begin my analysis of the force of these arguments by considering whether the trust has failed to comply with paragraph 1.15 of the Code, as the objectors submit. First, this paragraph requires that the selection of a feeder school "*must be transparent.*" There is no doubt that this is so in this case. The trust has made it perfectly clear which school is to be a feeder school, both in the consultation period and in the arrangements themselves.

18. Second, paragraph 1.15 requires the selection of a feeder school to be "*made on reasonable grounds.*" The trust has certainly made clear some reasons for selecting Harpenden Academy as a feeder school. These include the fact that it is part of the same multi-academy trust as the school, the sharing of ethos and values, the benefit for the pupils of joint working and the advantage of continuity in their education from primary to secondary school. One of the objectors questions whether there is any evidence that a sharing of ethos and values is necessarily beneficial. In response, the trust "*fundamentally disagrees*" with this suggestion. It says,

"We consider that the clear benefits occasioned to Harpenden Academy by its association with SJL and the Trust, arising from the shared values and ethos of each, are obvious and more than capable of amounting to reasonable grounds under the Code."

19. It is not necessary for me to come to a firm view as to extent of the benefits of the two schools sharing an ethos and values. In order to meet the requirements of paragraph 1.15 of the Code, the trust simply needs to show that it had grounds for making the selection of a feeder school and that those grounds were reasonable. I consider that it has done so and therefore I do not uphold the objection that the arrangements breach paragraph 1.15 of the Code.

20. Before moving on to consider whether the arrangements meet other requirements of the Code, I should mention that a number of the objectors express the view that an important underlying reason for the trust seeking to make Harpenden Academy a feeder school to Sir John Lawes School is for it to become a more attractive option for parents to choose for their children to attend, thereby increasing its roll so that it can become “*financially viable*” and “*sustainable*.” They say that the trust did not make this reason clear during the consultation period (an issue I will address later) and argue that it is unreasonable to seek to improve the position of one school to the potential detriment both of other local schools and children. I consider this argument of the objectors in detail in paragraphs 43-46 below. At this point, I would simply repeat that the trust has demonstrated reasonable grounds for introducing the feeder school criterion and therefore, in this respect, it complies with the Code.

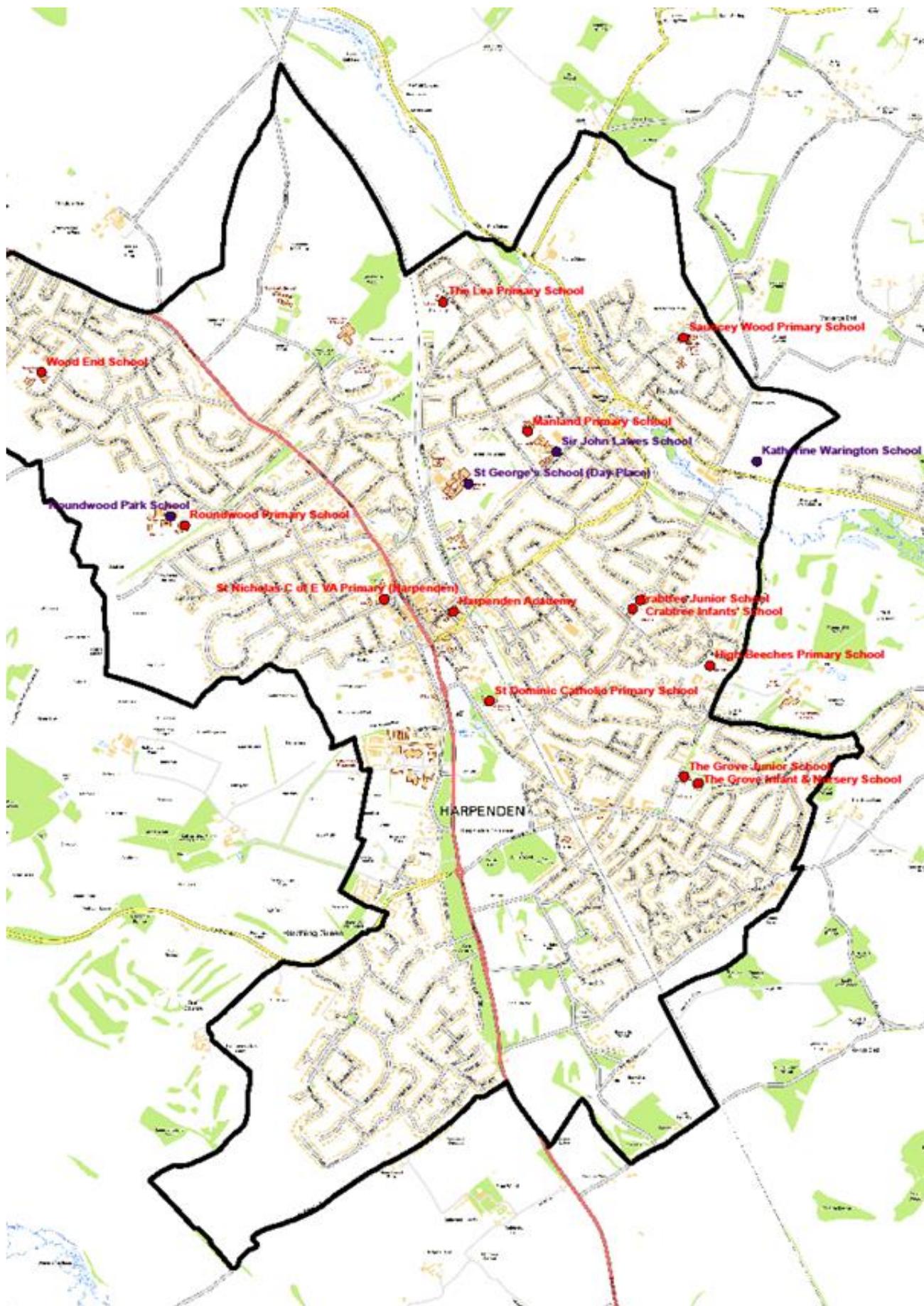
Is the selection of the feeder school unreasonable in its effect?

21. The majority of the arguments of the objectors contend that the selection of Harpenden Academy as a feeder school is unreasonable and unfair because its effect is likely to be that children who live closer to the school may not obtain a place there and will have difficulty in obtaining a local secondary school place. The Code requires that not only must there be reasonable grounds for the selection of feeder schools, but the effect of oversubscription criterion must also be reasonable and fair in order to meet the requirements of paragraphs 1.8 (reasonableness) and 14 (fairness).

22. I should point out that at many points the objectors seem to use the words “*unreasonable*” and “*unfair*” interchangeably and without making specific distinctions between them. In this section, I am considering whether the introduction of the feeder school criterion will be unreasonable in its effect.

23. The map below shows the location of the four secondary schools (marked in mauve), including Katherine Warrington School that is to open in September 2019, and the primary schools (marked in red) in Harpenden. All of the secondary schools are located in the northern part of the town.

Map: Primary and Secondary Schools in Harpenden



24. Places at Sir John Lawes School have been allocated in accordance with the determined arrangements for admission to Y7 in September 2019 as shown in table one below.

Table One – Allocation of Y7 places at the school in September 2019

Category / oversubscription criterion	Number of places allocated
Children with EHC plans	2
Looked after / previously looked after children	1
Siblings of pupils at the school	97
Children of staff	6
Children living in the priority area for whom the school is their nearest	90
TOTAL (PAN)	196

The distance from the school of the last child admitted was 1,151 metres. 117 other children were considered under the fifth criterion but were not allocated a place, as they lived further away than this.

25. The LA reports that parents of 13 of the 28 applicants from Harpenden Academy made Sir John Lawes School their first preference; it was the nearest secondary school for all of them. Eleven of these applicants were allocated a place. The LA has analysed how the allocations for September 2019 would have differed if the priority for pupils attending Harpenden Academy, which the trust plans to introduce for admissions in September 2020, had been in place. The analysis shows that three additional children would have been admitted if the feeder school criterion had been used (including at least one for whom the school was not their parents' first preference).

26. Within the year group that will be transferring to secondary school in September 2020 (currently year 5 (Y5)), the LA reports that for 11 of the 30 children on roll at Harpenden Academy, Sir John Lawes School is not the nearest secondary school. If the pattern of allocations for September 2019 were repeated in 2020, using the 2019 oversubscription criteria, these 11 children would not obtain a place at the school on the basis that they would fall to be considered under criterion 7 or 8 and no places would be expected to remain to be allocated under these criteria. However, they would obtain a place under the new feeder school priority, provided, of course, that was the preference of their parents. In addition, it may be the case that a small proportion of the 19 children at Harpenden Academy for whom the school is their closest might not obtain a place under that criterion, but would under the feeder school rule that gives them a higher priority.

27. The trust does not dispute these figures but draws attention to what it believes is a highly significant additional factor, that is, the establishment of Katherine Warington School. The school is a free school established by a partnership that includes the existing three secondary schools in Harpenden. Those three secondary schools, or their predecessor schools before they converted to academy status, were all rated 'Outstanding' by OfSTED at their most recent inspection. The other partners are the University of Hertfordshire and Rothamsted Research. Katherine Warington has a PAN for admission to Y7 in September 2019 of 180.

28. The trust argues that the addition of 180 additional secondary places in Harpenden will mean that there are sufficient places in Y7 for all children transferring from primary schools in the town in September 2020. No child would be required to make a particularly long or difficult journey to school as a result of the introduction of the new criterion. I asked the LA to provide data in order to establish whether this would indeed be the case. I am grateful to the LA for the time and trouble that was taken to respond to what was a complex request. In summary, the figures provided by the LA show that there are 640 children who live in the Harpenden Planning Area currently in Y5 (the group that will transfer to secondary school in September 2020) at a primary school in the area. A further 100 or so children who live in the area but do not attend a primary school in the area are expected to seek secondary school places in the area. In addition, there are 47 children in Y5 at primary schools in the area, who do not live in the area and who may or may not seek secondary school places in the area.

29. The combined PANs for day places (St George's also admits a small number of boarders) of the four secondary schools in Harpenden (including Katherine Warington) will be 742. Based on historical patterns, the LA expects that around 30 of these places will be allocated to children who do not live in the Harpenden area. I surmise that these children might include some children of staff and siblings, who have priority for places. The LA's data also show that historically there are around 90 children from Harpenden each year who are allocated a place at a school outside the town that was their parents' first preference. These schools include single-sex schools in St Albans and Hitchin. The LA is uncertain whether this outflow from Harpenden will continue to such an extent. It says that, "*it is less obvious what will happen to application trends for other schools.*" One school located outside of the town recently removed priority for Harpenden area children from its admission arrangements.

30. Taking together the data provided by the LA, I conclude that the supply and demand for secondary school places in Harpenden will be as shown below in table two.

Table two - Likely supply and demand for secondary school places in Y7 in September 2020 from children in the Harpenden area

SUPPLY	NUMBER	DEMAND	NUMBER
Combined PAN for four secondary schools	742	Living in area and attending a town primary school	640
Places allocated to children from outside Harpenden	less 30	Living in area and not attending a town primary school	100
		Likely to be allocated a place at a school outside the town	less 90
TOTAL	712	TOTAL	650

31. The “demand” figures do not take into account the 47 children at primary schools in the area, who do not live in the area (including a small number of pupils at Harpenden Academy), many of whose parents may well wish them to transfer to a Harpenden secondary school. In addition, there may be other children living outside the area whose parents express a preference for a secondary school in Harpenden. The figure of 90 for children likely to be allocated a place at a school outside the town may, the LA suggests, reduce over time. Nevertheless, it does seem clear to me that there will be sufficient places in the town’s secondary schools in Y7 in September 2020, for all pupils living in the area (excluding those who have obtained a place at a school outside the town as a result of parental preference), as well as those attending Harpenden Academy who live outside the area. This is a welcome development, as before the establishment of Katherine Warington School significant numbers of children transferring to Y7 might not have been able to be allocated a place in any of the town’s schools had they all sought places at these schools.

32. One objector was concerned about the impact of the naming of Harpenden Academy on transport – both in terms of more parents driving their children to school and the need for free home to school transport to be provided. Harpenden is a relatively compact area. It is true that some children transferring from Harpenden Academy (or from other schools) may live further from the school than their parents would wish them to walk, cycle or travel by public transport. There are eight children in Y5 of Harpenden Academy who live further than the statutory distance (three miles) from the school. However, it is by no means certain that their parents will all seek a place for them at Sir John Lawes School. If they do, then they would only qualify for free home to school transport under the LA’s transport policy if the school is their “nearest school”. If they do so qualify, then free transport would need to be provided regardless of the school’s admission arrangements. If they do not qualify then transport will be a matter for them and their parents. However, I have been provided with no evidence, as distinct from a concern, that the change in admission arrangements is likely to

be have any material impact on the numbers of people driving their children to school in Harpenden.

33. The establishment of Katherine Warington School will also have another significant effect on the pattern of admissions in Harpenden, starting in September 2020. As a free school in its first year of opening, Katherine Warington School did not participate in the LA's co-ordination of admission arrangements for September 2019. This means that the location of the new school was not taken into account when working out which pupils had priority for a place at Sir John Lawes School under the oversubscription criterion, "*Children who living in the priority area for whom the school is their nearest.*" For admissions in September 2020, Katherine Warington School will be taken into account as a potential "*nearest school*" when considering applications to Sir John Lawes School. As can be seen from the map, this is likely to have a significant impact, as Sir John Lawes is located relatively close to Katherine Warington.

34. I asked the LA to undertake an analysis of the applications made to Sir John Lawes School for September 2019 *with the location of Katherine Warington School taken into account as a potential 'nearest school'* (this will be the position for September 2020). The LA informed me that the result was that 24 children who were allocated places at Sir John Lawes School under the "*nearest school*" rule would not have been, had Katherine Warington been taken into account, as they live closer to Katherine Warington School. Additionally, of the 117 other applicants for the school who were considered under the "*nearest school*" rule and were not allocated a place, 77 would not have been considered under that rule, due to their proximity to Katherine Warington.

35. It is, of course, not the case that applicants' addresses and parental preferences will be precisely the same for those seeking admission to Y7 in September 2020, but it does not seem to me unreasonable to expect a broadly similar pattern. That being the case, I conclude that the effect of the establishment of Katherine Warington School and its inclusion within the LA's co-ordinated scheme will be at least as significant as the feeder school oversubscription criterion that is being introduced. The LA's analysis of the September 2019 allocations shows that 24 more places would have been available at Sir John Lawes School for applicants for whom it was their nearest school, had the establishment of Katherine Warington School been a factor in the application of the oversubscription criteria of the school. Based on the figures set out in paragraphs 25 and 26 above, I consider it is safe to assume that fewer than 24 of the 30 pupils leaving Harpenden Academy in September 2020 will be allocated a place under the feeder school rule *who would not otherwise have been allocated a place*. Less than 50 per cent of parents of children at Harpenden Academy made Sir John Lawes their first preference for admission in September 2019; of those applying for September 2020, some may be siblings (with a higher priority than under the feeder school rule) and others may live sufficiently close to Sir John Lawes that they would have been allocated a place without the benefit of the feeder school criterion.

36. The trust has confirmed that it has no plans to increase the size of the cohort of children currently in Y5 at Harpenden Academy (the group transferring to secondary school

in September 2020). In fact, before proceeding I should refer to a paper produced by its admissions committee that provides a response to the consultation on the change to its arrangements, in which the trust said,

“Harpenden Academy will only accept in year admissions within Years 5 and 6 where there is considered to be a proven educational benefit for the child to do so.”

More than one objector pointed out that such a statement is at odds with the requirements relating to admissions. All applications for places must be considered strictly in accordance with the school’s admission arrangements and, if in-year places become available, they **“must be offered, without condition”** (paragraph 2.8 of the Code). Subsequently, the trust clarified its statement as follows:

“This statement was meant to reflect the fact that, although the Academy’s official PAN is 60, years 5&6 are currently capped at 30 students and we could not take students above that number unless there were extraordinary circumstances, as we are not staffed or resourced to do so. We are happy to review that wording.”

This clarification is welcome. It flows as might be expected from the fact that when the cohort of children now in Years 5 and 6 at Harpenden Academy first joined the school, the number of children allocated places there was far lower than 60. I imagine examples of the *“extraordinary circumstances”* when an admission in excess of 30 might take place would include a child with an Education, Health & Care Plan naming the school or a looked after or previously looked after child.

37. I consider, therefore, that it is highly likely that no applicant, for whom Sir John Lawes continues to be their nearest school, will be in a less favourable position in respect of obtaining a place at the school in September 2020, compared to September 2019. Of course, those children for whom Katherine Warington School is the nearest secondary school to their home will have a lower priority for a place at Sir John Lawes but that is completely unrelated to the priority now being given to children from Harpenden Academy. Furthermore, applicants not allocated a place at the school are very likely to be allocated a place at another school within the town, as table two shows. The trust made repeated reference to the establishment of Katherine Warington School in its responses to the objections. Although the trust does not explicitly say that it would not have proposed the naming of Harpenden Academy as a feeder school if Katherine Warington School were not to be part of the co-ordinated scheme for admission in September 2020, I consider that the overall pattern of admissions in Harpenden needs to be taken into account. My conclusion is that, as far as the allocation of secondary school places is concerned, no group of children can be said to be unreasonably disadvantaged by the introduction of the new feeder school criterion.

Is the selection of the feeder school unfair?

38. Several of the objectors argue that it is unfair that children who attend primary schools closer to Sir John Lawes School than is Harpenden Academy may be unable to obtain a place there, due to Harpenden Academy being named as a feeder school. They

also say that it is unfair that children for whom Sir John Lawes is their nearest secondary school and who live closer to it than some of the children attending Harpenden Academy could be denied a place because children attending the feeder school have a higher priority for a place. One objector quotes from a footnote in the Department for Education’s Free School Admissions Guidance. In its entirety, this footnote says,

“It is impossible to be comprehensive about this but arrangements that deliberately bypass children living next to the school or which target schools some distance away as feeders over those closer to the school are likely to be unfair.”

I should make clear that the guidance is provided for new free schools preparing their first set of admission arrangements, so does not apply directly to Sir John Lawes School. More importantly, for me and for the admission authority, is what is in the Code and the law relating to admissions, which is of primary importance. When an objection is made to a particular set of arrangements on the basis that they are unfair, it is the role of the adjudicator to decide – in accordance with the law and the Code – whether or not the arrangements in that particular case are or are not unfair.

39. I note that there was some disagreement between the parties about the distances from Sir John Lawes of the local primary schools. What is clear and beyond dispute, however, as shown by the figures below, provided in a submission made by one of the objectors, is that there are four primary schools located closer to Sir John Lawes School than Harpenden Academy (three marginally so) and that those four and Harpenden Academy are all located within one kilometre of Sir John Lawes.

Table Three – Distances between Sir John Lawes School and local primary schools

Primary School	Distance from Sir John Lawes School
Manland Primary School	168 metres
Saucey Wood Primary School	821 metres
Crabtree Junior School	825 metres
The Lea Primary School	906 metres
Harpenden Academy	918 metres

40. The Code provides at paragraph 1.9 that it is for admission authorities to formulate their arrangements provided that they do not breach certain requirements. There is no requirement to give priority to pupils for whom the school is the nearest, ahead of pupils who live further away. Neither is there any requirement that the only permissible feeder schools are the schools located closest to the school. Admission Authorities have the power to decide how they give priority for places, provided they do not use practices that the law prohibits and provided their arrangements are fair, clear and objective as required by paragraph 14 of the Code. Inevitably, the oversubscription criteria that admission authorities choose, and the way they are ordered, will provide some groups of children with an advantage over others; this is, after all, the purpose of oversubscription criteria. Fairness is not defined in paragraph 14, but my view is that admission arrangements could not be

considered fair if their effect were to be that children could not attend a school within a reasonable distance of their home.

41. I do not consider that the introduction of the feeder school criterion will have an unfair effect as it will not prevent any group of children from being able to attend a school within a reasonable distance of their home. As I have explained in previous paragraphs, I expect all children living in Harpenden to be able to attend a secondary school in the town. The number of children allocated places at the school under the feeder school criterion will reduce the places available to those who live closest to the school, but not to the extent that those who “*live next to the school*” will not be able to obtain a place. It is not the case that a feeder school has been selected that is a long way distant from the school; it is one of four that are between 800 and 1000 metres away.

42. The point was made by several objectors that Harpenden Academy has a PAN of 60 and, in time, it might be possible that a large majority of these children would live outside Harpenden. They would be able to obtain places at the school, under the feeder school rule, at the expense of local children. It is not for me to speculate whether such a scenario might arise. My jurisdiction is restricted to considering the arrangements for admission in September 2020, when the cohort leaving Harpenden Academy will be around 30. I would comment, however, that if the effect of the feeder school criterion were to be that a group of children would not be able to obtain a place at any secondary school in the town, I might have come to a different view as to the reasonableness and fairness of the arrangements.

Detrimental effect on other schools

43. Finally, before moving on to other matters, I must consider the arguments made by more than one objector that the naming of Harpenden Academy as a feeder school to Sir John Lawes School may have a detrimental effect on other primary schools in the town and, therefore, the pupils who attend them. These arguments are summarised at g), h) and i) in paragraph 16 above.

44. The LA confirms that there has been a ‘*significant decrease*’ in the demand for places in the Reception Year (YR) from the Harpenden area in recent years. It says,

“the cohort decreased from 504 in 2015 to 403 in 2018, with a slight rise this year to 423. There are currently 517 permanent Reception places available in the town and, whilst it is inevitable some places will be filled by children from outside the immediate area, it is very unlikely that all primary schools will fill to capacity.”

The concern expressed by the objectors is that the naming of Harpenden Academy as a feeder school may make it more attractive to parents. Harpenden Academy enrolled 24 pupils into YR in September 2018, but it has a PAN of 60. If it were to enrol more pupils in future years, it may be that a direct result will be that fewer pupils will be enrolled in other primary schools. The diocese, in its objection, says that the naming of Harpenden Academy as a feeder school,

“has the potential to damage the overall sustainable provision of primary education in the area and therefore is an unreasonable decision.”

45. I recognise the concerns expressed by objectors. However, I do not agree with them. Put bluntly, their argument says that it is unreasonable for a school to admit up to its PAN because this may lead to other schools being undersubscribed. I have found that the naming of Harpenden Academy as a feeder school was made on reasonable grounds and I have found that it has no unfair effect on any group of children, in relation to admission to secondary school in September 2020. If an effect of the new criterion is that Harpenden Academy becomes more fully subscribed, it therefore cannot be considered an unreasonable effect, nor is it contrary to the trust’s object to *“advance for the public benefit education in the United Kingdom.”* If there proves to be a long-term mismatch between the supply of and demand for school places in the area, it is ultimately the responsibility of the LA to address the issue appropriately. I note also that many factors affect the relative popularity of schools in an area.

46. I also reject the suggestion that by seeking to provide continuity of education by naming Harpenden Academy as a feeder school, the trust is denying continuity of education for pupils at other schools in the town. Whilst there may be a historical expectation of transfer to Sir John Lawes for pupils attending the primary schools located closer to the school, those schools have not been named as feeder schools in the recent past, if ever. The high priority for siblings ensures that children in the same family can attend the school. Otherwise, it is pupils’ home addresses that determine their priority. For the reasons that I have explained above, in this respect, I do not expect the position in September 2020 to be any less advantageous for pupils for whom the school continues to be their nearest than in September 2019.

47. My conclusion is therefore that the feeder school criterion does not breach paragraph 1.8 of the Code as it is not unreasonable in its effect on any group of children, nor do the arrangements breach paragraph 14 of the Code in respect of their fairness. Accordingly, I do not uphold this aspect of the objections.

Consultation

48. Several objectors allege that the consultation undertaken by the trust about its proposal to introduce the feeder school oversubscription criterion was defective. The requirements for consultation when admission authorities are proposing changes to admission arrangements are set out in paragraphs 1.42-1.45 of the Code. The reasons why the objectors believe that the consultation did not satisfy the requirements were as follows:

(i) The principal reason for the proposed change, that is, to increase the intake of pupils to Harpenden Academy so that it could become financially viable, was not stated during the consultation;

(ii) The consultation document made no mention or analysis of the impact on pupils outside the trust;

(iii) During the course of the consultation, the proposed arrangements altered. Consultees were not informed of the change and the revised arrangements were not the subject of consultation for a minimum of six weeks (as required by paragraph 1.43);

(iv) The admission authority failed to publish a full copy of the proposed admission arrangements on its website for the full duration of the consultation period, as required by paragraph 1.45;

(v) The consultation period ended during the school holidays and some responses could not be delivered;

(vi) The trust accepted some submissions after the closing date for consultation; and

(vii) An inaccurate distance was quoted in the consultation document, that is, that Harpenden Academy is “under half a mile from Sir John Lawes School”.

49. In response to the claim that it did not make clear the potential financial benefits for changing the arrangements, the trust says,

“We have never denied that we are keen to increase the roll at Harpenden Academy but it is by no means the ‘principle [sic] reason’ for these changes.”

The trust also makes clear that it does not believe that the consultation can be considered defective because any possible disadvantage to pupils was not spelled out. It explains that the consultation was,

“designed to set out our proposals and solicit the views of those who might be affected by them.”

50. When informing consultees about the proposed change to its admission arrangements, the trust did give some reasons for the proposal. It mentioned the “*strong links*” between the two schools and “*the reassurance of continuity and stability of education.*” In my view, this was sufficient for consultees to understand why the proposal was being made and to make a response to it. It may well have been helpful if the trust had gone into further detail about the potential benefits to Harpenden Academy as a viable school if the proposal were to be implemented, but I do not consider that this was absolutely necessary in order for the consultation to be effective.

51. The trust admits that the set of oversubscription criteria that were initially sent to consultees contained “*an administrative error.*” Rules 6 and 7 were inadvertently altered. Once the mistake was pointed out to it by the LA, the trust followed the LA’s advice by correcting the error in the consultation document on its website, showing that Rules 6 and 7 were not proposed to be altered. The trust argues that the reason for the consultation was the introduction of Rule 5 (the feeder school criterion) and that “*no-one was misled or suffered any prejudice*” as a result of Rules 6 and 7 being wrongly worded for the first part of the consultation period. I agree with the trust, although it would have been wise if those consultees it contacted directly had been alerted to the mistake at the time it was rectified. I

do not consider that it was necessary at that point to begin again the six-week consultation period that the Code requires. I note in this context that not only must consultation last for at least six weeks but that it must take place between specific dates, which would make it hard to re-start a consultation from scratch.

52. The objection made by St Nicholas Primary School says that it was only possible to find a summary of the admission arrangements on Sir John Lawes School's website between 3 December 2018 and 5 January 2019, when the period of consultation ended. Paragraph 1.45 does require admission authorities to publish "*their full proposed admission arrangements*" for the duration of the consultation period. A summary of the proposed changes, showing the oversubscription criteria, was made available to consultees, stating,

"You can view the proposed 2020-2021 admissions rules on the school website."

According to the objector, the full text of the arrangements could not be found.

53. It is a breach of the Code if the proposed arrangements are not published in full on the school's website throughout the consultation period. Admission arrangements consist of more than the PAN and oversubscription criteria; matters such as in-year admissions, waiting lists and definitions of key terms must be included. However, I recognise that the trust was not seeking to alter any of these matters; details of the proposed change to the oversubscription criteria were readily available.

54. In response to the suggestion that some responses could not be delivered during the school holidays, the trust says that it used the same dates for its consultation as the LA. The school was open for postal delivery on 4 January and electronic responses could be made over the weekend that followed. It does not believe any one was "*unfairly disadvantaged*." Indeed, when responding to another objection, which says that responses should not have been considered that were received after the deadline, following a meeting with the town's MP, Mr Afolami, the trust wrote that it did this,

"to ensure that no relevant issues that might have been raised in the consultation but had mistakenly been reserved until after the meeting with Mr Afolami (which was after the closing date) were overlooked."

The LA commented that it did not believe it was unreasonable for the trust to consider responses received soon after the closing date. I agree. The Code sets out the minimum requirements for consultation; the trust should not be censured for exceeding them in this particular way.

55. With respect to the final criticism of the consultation listed above, that is, that an inaccurate measurement was quoted, I do not consider that the error was sufficiently egregious to have misled consultees. The difference between the correct distance between Harpenden Academy and Sir John Lawes School (918 metres) and half a mile (804 metres) is not so large as to have introduced any significant confusion into the consultation process.

56. The trust's Admissions Committee considered the results of the consultation in some detail. 246 responses were received, with "*the balance*" opposed to the proposed change (one of the objectors says 15 were in favour). A consultation is not a referendum. The trust came to the view that the responses did not alter its view that the naming of Harpenden Academy was "*transparent and made on reasonable grounds*", as the Code requires. As the foregoing paragraphs show, there were some aspects of the consultation that were less than ideal, but these were not of a nature as to lead me to conclude that the consultation was ineffective either in providing consultees with the opportunity to make an informed response or in informing the trust as to the extent of the opposition to its proposal and the main reasons for that opposition.

The arrangements for admission into the sixth form

57. The LA's objection also draws attention to aspects of the school's arrangements for the admission of external students to the school's sixth form that it believes are in breach of the Code.

58. First, the LA points out two parts of the application form that external students are required to complete. This form is referred to in the Code as a 'Supplementary Information Form' (SIF). The SIF asks for the name of a "*referee*" from their current school. Applicants are also asked to compile a "*Personal statement*" explaining

"why you wish to study each subject that you have selected and include any future career plans. Please also say what you could offer to the wider school community including how you will help with paired reading, running a club or peer mentoring."

The LA says that the request for a 'referee' implies that a reference will be sought. The Code, at paragraph 1.9 (g), prohibits admission authorities from taking into account, "*reports from previous schools about children's past behaviour, attendance, attitude or achievement.*" The information that applicants are asked to provide in their personal statement is, the LA says, in breach of paragraph 2.4 of the Code as it does not have a direct bearing on decisions about oversubscription criteria, which that paragraph makes clear is the only information a SIF may request. Furthermore, admission authorities are prohibited, in paragraph 1.9 (i) of the Code, from prioritising children "*on the basis of their own or their parents' past or current hobbies or activities.*"

59. Second, the LA argues that the inclusion of an oversubscription criterion that reads,

"Students whose choices have least effect on the preferences of others"

does not comply with the Code. The Code requires, in paragraph 14 that,

"Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."

It would not be possible, in the LA's view, for a parent or student to understand how this oversubscription criterion would be applied in their case.

60. In response, the trust expresses its willingness to “*remove or rephrase*” any part of its arrangements for admission to the sixth form that does not comply with the Code. It makes clear that referees have only been used to confirm predicted grades and that the personal statement has not been used for “*selection purposes*.”

61. I agree entirely with the LA that the aspects of the arrangements for admission to the school’s sixth form that it has highlighted are in breach of the Code. I therefore uphold this aspect of the objection. The trust’s readiness to make appropriate changes is welcome.

‘Tie-Break’

62. The arrangements refer to two places to a “*Tie-Break*”. First, immediately after the oversubscription criteria, the following words appear.

“*Tie-Break*”

“If more children qualify under a particular rule than there are places available, a tiebreak will be used by applying the next rule to those children. In the case of two applicants with exactly the same priority under the admissions rules, but only one place being available, the Governing Body will offer places to both families.”

Second, later in the arrangements, it is explained that applicants who live exactly the same distance from the school will be prioritised by random allocation.

63. In paragraph 1.8, the Code stipulates that,

*“Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.”*

In my view, the second tie-break in the arrangements meets this definition. The first is, in fact, a description of how priority for places is established amongst applicants, within each oversubscription criterion.

64. It was not clear to me how “*applying the next rule*” in order to prioritise applicants would work in practice. If, for example, siblings (Rule 3) need to be ranked in order of priority, identifying those that are children of staff (Rule 4) would not appear to be sufficient in most cases to resolve oversubscription. Rule 7 on the other hand, appears to have a means of ranking built in to the criterion. It reads, “*Children who live in the priority area who live nearest to the school.*” I take this to mean, although it is not entirely clearly worded, that children would be ranked within this criterion on the basis of their distance from the school. Certainly, applying Rule 8 (“*Children who live outside the priority area*”) would not help with ranking applicants for the simple reason that a child who lives in the priority area will not live outside it.

65. When I asked the trust for an explanation of the operation of this “*tie-break*”, I was referred to the LA, which it contracts to undertake this aspect of the admissions process. The LA’s explanation of “*applying the next rule*” contained these statements:

“If there were two children who qualified for the last place under Rule 3 equally (i.e. - both had siblings and were equidistant to the school), the next rule would be applied until a rule was found where one child qualifies more than the other.”

“A child will only ever qualify under Rule 6, 7 or 8; not all. Therefore, if there were two children equally entitled to a place under any of these rules; both would be admitted to Sir John Lawes as stated in the arrangements.”

66. These responses were a concern to me. The first assumes that siblings are ranked for priority for places on the basis of their distance from the school, which the arrangements do not make clear. The second admits that “*applying the next rule*” cannot be used to determine priority under Rules 6, 7 or 8 and that, when distances are equal, both applicants would be admitted. In this respect, therefore, the arrangements are internally contradictory as in different places they specify different courses of action will be taken. The first tie-break says that when distances are equal both applicants will be admitted; the second says that random allocation will be used.

67. I find that the arrangements are in breach of paragraph 1.8 of the Code, in respect of the tie-breaker, and paragraph 14, which requires “*the practices and the criteria used to decide the allocation of school places*” to be “*clear*.” The admission authority must make the necessary amendments, as the Code requires it to do.

Summary of Findings

68. The selection of Harpenden Academy as a feeder school is transparent and has been made on reasonable grounds. The priority given to children attending Harpenden Academy will not be unreasonable or unfair in its effect, as the establishment of Katherine Warrington School means that there are sufficient local secondary school places in the area. The inclusion of Katherine Warrington within the co-ordinated admission arrangements will mean that children who continue to live closest to Sir John Lawes will be in no less advantageous a position. I do not uphold this aspect of the objection.

69. I uphold the LA’s objection to the arrangements for the admission of external students to the sixth form, which breach the Code in several ways. I also find that both the means of establishing priority within oversubscription criteria and the tie-breaker are unclear and therefore do not comply with the Code.

Determination

70. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection made by Hertfordshire County Council to the admission arrangements for September 2020 determined by Scholars’ Education Trust for Sir John Lawes School, Harpenden, Hertfordshire, in respect of admission to the sixth form. I do not uphold any of the objections relating to the naming of a feeder school.

71. 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.

72. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

Dated: 8 July 2019

Signed: 

Schools Adjudicator: Peter Goringe