



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3870

Objector: Leeds City Council

Admission authority: The Governing Board for Guiseley School, Leeds

Date of decision: 20 October 2021

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the Governing Board for Guiseley School, Leeds.

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

By virtue of section 88K(2), the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the PAN must be revised prior to the closing date of 31 October 2021 for applications to be made for places at the school in September 2022, and that further revisions must be made within two months of the date of this determination.

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 Leeds City Council, the objector, about the admission arrangements (the arrangements) for Guiseley School (the school), a foundation school for children aged 11 to 18 for September 2022. The objection is to the published admission number (PAN) for admissions to Year 7 which the admission authority has determined.

2. The local authority (LA) for the area in which the school is located is Leeds City Council and is the objector and therefore a party to this objection. The other party to the objection is the school's Governing Board.

Jurisdiction

3. These arrangements were determined under section 88C of the Act by the school's Governing Board, which is the admission authority for the school. The objector submitted its objection to these determined arrangements on 14 May 2021. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and that 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). At the time of the determination of the school's admissions arrangements and at the time the objection was made, the School Admissions Code 2014 (the 2014 Code) was in force. A revised Code came into force on 1 September 2021, which means that the 2014 Code no longer has any effect.

5. Since the objection and the response to it were framed in terms of the 2014 Code, I shall use the references to it which have been made by the parties to the case and by myself in correspondence with them, but will indicate if the new Code differs in any respect. It is of course the revised version of the Code which is now in force.

6. The arrangements for the school as set out in this determination were determined on 19 January 2021. At that date the 2014 Code provided that children previously looked after in England and then adopted or made subject to a child arrangements or special guardianship order should have equal highest priority with looked after children in school admission arrangements (subject to certain exemptions in schools with a religious character).

7. The new Code which came into force on 1 September 2021 extended the same level of priority for looked after and previously looked after children to children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted. All admission authorities were required to vary their admission arrangements accordingly by 1 September 2021, and this therefore means those determined for admissions in 2021 and those for admissions in 2022. There was no requirement for these variations to be approved by the adjudicator and no reason for the school to send me its varied arrangements.

8. I have made my determination in this case on the basis that the admission authority would have varied its arrangements in order to comply with the new requirements set out above, but that it has awaited the outcome of this determination before considering all the

changes which it should make in order to comply with the requirements of the Code and legislation.

9. The documents I have considered in reaching my decision include:
- a) the objector's form of objection dated 14 May 2021, and subsequent correspondence;
 - b) the school's response to the objection and subsequent correspondence;
 - c) a map of the area identifying relevant schools;
 - d) confirmation of when consultation on the arrangements last took place;
 - e) copies of the minutes of the meeting of the governing board at which the arrangements were determined; and
 - f) a copy of the determined arrangements.

The Objection

10. The LA has objected to the published admission number (PAN) which has been determined for admissions to Year 7 at the school in 2022. This is 210, which is a reduction from that for admissions in 2021, which was 240. The LA says that the reduction in the number of places which is the result of this change means that it will be unable to meet its duty to provide sufficient school places in the northwest part of the area it serves without expanding other schools.

Other Matters

11. When I looked at the arrangements, I was concerned that there were aspects of them which may not conform with the requirements set out in the Code. Paragraph 14 requires that admission arrangements are clear, and it seemed to me that the following may not meet that standard:

- (i) the phrase: "...parents who put their nearest school..."
- (ii) the phrase: "...you must preference our school to be allocated a place..." and
- (iii) the wording of the oversubscription criterion and associated footnote:

"Priority 4 We will give priority to parents who choose Guiseley school, when it is not the one nearest to their home address (see note 6).

Note 6 The nearest priority area has been defined by the straight-line distance between our school and the next nearest school that is non-faith based admission policy." (sic)

12. I have therefore decided to use my power under section 881(5) of the Act to consider the arrangements as a whole.

Background

13. Guiseley is a conurbation to the northwest of the city centre of Leeds, geographically between Shipley to the south (which is part of the neighboring LA, the City of Bradford) and Otley to the north, which is part of the area of Leeds City Council. There are three other secondary schools within three miles of Guiseley School, one of which is in the area of Bradford LA. Within four miles of Guiseley School there are four further secondary schools, two within Leeds and two in Bradford.

School (in order of distance)	Local authority	Distance from Guiseley School
St Mary's Menston, a Catholic Voluntary Academy	Leeds	Less than 1 mile
Benton Park School	Leeds	Less than 2 miles
Immanuel College	Bradford	2 miles
Otley Prince Henry's Grammar School	Leeds	3 miles
Titus Salt School	Bradford	Less than 4 miles
Horsforth School	Leeds	Less than 4 miles
Hanson School	Bradford	Less than 4 miles

14. This is the context in which the planning of the provision of school places takes place by the LA. It uses what it calls Secondary Planning Areas (SPAs) for this purpose and the school, together with St Mary's Menston and Benton Park School constitute the LA's "Outer North West" SPA. The objection, and the school's response to it, centre on a disagreement about the likely future need for school places locally and therefore at the school.

15. The school carried out a consultation between 9 November and 21 December 2020 on its proposal to reduce the published admission number for admissions to Year 7 in 2022 from 240 to 210. The LA objected to this proposal, and has provided me with a copy of its response to the school at that time. It told the school that it strongly opposed the proposal, and set out its projected need for Year 7 places there for each year up to 2025. These were higher than 210 in each year, and the LA told the school that projections for neighbouring schools also exceeded the number of available places and that the proposed reduction "would be detrimental for local children". The LA stated in its form of objection that "Guiseley School have recently had significant building work, supported by the DfE and based on capacity for 240 per year group."

16. The school nevertheless determined a PAN of 210 for admissions to Year 7 in 2022. Its rationale, as set out in the response it made to the objection made by the LA, was that it had not admitted a “full cohort” of 240 in six of the previous seven years, and that the reduced income which resulted had contributed to its current budget deficit. It expressed the view that it would benefit financially if it could introduce a curriculum model based on having seven full forms of entry each year.

17. The arrangements, as determined by the Board of Governors at the conclusion of the consultation process are, in summary, as follows.

- (i) The published admission number is 210
- (ii) Children whose Education, Health and Care Plan names the school will be admitted
- (iii) Looked after and previously looked after children (as defined) are given highest priority for admission, followed by children whose special educational, medical or mobility needs can only be met at the school
- (iv) Siblings (as defined) of children at the school are given next priority
- (v) Priority is then given “to parents who put their nearest school (see note 6)”
- (vi) The next priority, Priority 4 is set out in the following terms:

“We will give priority to parents who choose Guiseley School, when it is not the one nearest to their home address (see note 6)”

“Note 6 : The nearest priority area has been defined by the straight line distance between our school and the next nearest school that is non-faith based admission policy” (sic)

- (vii) A further footnote contains the phrase:

“.....you must preference our school to be allocated a place....” .

Consideration of Case

The PAN

18. When it made its objection, the LA acknowledged that there had been a history in recent years of the number of final offers of places at the school being lower than the LA had itself projected - with consequential financial difficulties for the school. It also accepted that the governors had given due consideration to its objection about the sufficiency of places locally when determining the PAN of 210. However, it stated that “current projections for the Outer North West SPA suggest the current 2021 level for the coming years, with the potential for some years with higher demand.” It believed that it was highly likely that the school would admit 240 pupils in 2022 were that to be the PAN. It referred to the fact that admission data for 2021 showed a strong demand for places at the school, and

subsequently told me in July 2021 that “Since offer day 2021, all other secondary providers in the Outer North West SPA have remained full or have admitted over PAN. At today, the only surplus place [in Year 7] across the planning area is one vacancy at Guiseley School.” This last statement was based on there being 239 offers of places at the school at that time. The LA told me that “Current projections for the Outer North West SPA suggest that the demand for places will increase in 2022.” These projections were set out in its form of objection as:

Year of entry to Year 7	2021	2022	2023	2024	2025	2026
Outer North West SPA	690	705	725	686	696	672

19. The school responded by again referring to the trend in recent years for the school to be “full” on offer day, but for numbers to dwindle subsequently, leaving vacancies. It said that it still did not expect to have a full cohort in September 2021, and said that it based this view on its consideration of local factors such as increased admissions at the nearby Ilkley Grammar School (in Bradford) and challenged what it understood to be the LA’s forecasting methodology, in particular the way it allocates children to a “nearest school” and the effect of there being a likelihood of reduced admissions from the nearby Bradford authority area, which it says would not be recognised in the LA’s forecasts. The LA has explained to me the methodology which it uses for forecasting and this includes information such as projected housing completions which is not available to schools. I have no reason to doubt that the LA’s approach is robust and comprehensive.

20. The LA said that it had considered the points made by the school, and added further information about the recent growth in primary school year 6 numbers in the Guiseley area in 2021. It insisted that its own view remained that there was a risk of there being insufficient local places for Year 7 children in 2022 based on the school’s determined PAN. It told me on 17 August 2021 that the allocation for the school for September stood at 241, and that there were no surplus places in Year 7 in either the Outer North West SPA or that of the neighbouring Otley SPA. It continued to take the view as a result that the school was likely to fill with 240 places in 2022. The number on roll in Year 7 at the school on 14 October 2021 was 241.

21. Finally, the school said to me that the disagreement between itself and the LA was as a result of differences in the factors taken into consideration by each in coming to a view about the future need for school places, with the school taking into account recent historical trends and what it considers to be the effect of factors outside the Outer North West SPA. It considered that there remained a real risk of it having surplus places beyond 2022 and referred again to the financial consequences should that be the case. It said that “...we are

confident that there are sufficient places for the level of local demand and we have to balance this against our deficit financial position”.

22. In coming to a view on this matter, I have considered very carefully the financial deficit which the school has told me it is carrying, and that it has also told me that “This deficit has in large part been caused by adopting an 8 form entry curriculum model whilst only achieving a full 8 forms once in the last decade.” I have noted similar comments made by the school leadership which are recorded in the minutes of the Extraordinary General Meeting of the governing board at which the arrangements were determined. These say that “The school always has the right to increase PAN without seeking permission and would be willing to discuss doing this when full groups can be guaranteed”, and where the following statements are also made:

“It is important that whichever curriculum model is followed, the school is able to fill the classes to ensure the school is appropriately funded to deliver the curriculum model chosen.” and

“In recent years, student numbers have been between 220 and 225, occasionally reaching 230, but 240 has only been realised once. This results in financial issues as the school is modelling to a curriculum it is not being funded for.”

23. The school is explicit in seeking a reduction in PAN in order that it will have only seven classes in Year 7 in September 2022, and that these will be full classes. In other words, it takes the view that its financial viability is compromised if it does not have full classes in Year 7 in 2022, and subsequently. However, I do not accept that the desire to achieve full classes can of itself be a sufficient rationale for setting a particular PAN. Although it is obviously an ideal financial scenario for any school if all classes are full, it cannot be necessary for this school, or any for any other school for that matter, to set a PAN which will ensure that this is the case.

24. School funding is, intentionally, based predominantly on the number of pupils of different ages on roll, not on the number of classes they contain, and that has been the case since formula funding was first introduced. Maximum class sizes only apply to infant classes, as spelled out in paragraph 2.15 of the Code (paragraph 2.16 of the 2021 Code), and not to any other age of pupil. For other children, it is the responsibility of the school’s Headteacher to organise teaching and learning. Formula funding is, in reality, a school’s share of the available budget, and nothing else. Consequently, it has never been the case that schools can expect to have only full classes, and it has always been the case that they are nevertheless expected to manage without creating deficit budgets. I am not privy to the curriculum model which the school has adopted, or to the particular reasons why this has continued to be in operation in recent years as the school has told me, in spite of what was apparently a growing financial deficit. I am conscious however that there is no required or expected curriculum model that a school must use. I am also conscious that there are numbers of schools which admit fewer children than their PAN would allow and that some of these may well also be schools with PANs of 240 who only admit around 210 children.

25. I have to set against these considerations what the local authority has told me about the number of Year 7 places at the school in September 2022 which it believes will be necessary to ensure that local children can attend a local school. The school has sought to persuade me that its own forecast of pupil numbers is likely to be more accurate than that which the local authority produces and in its response to the LA's objection to its proposal to reduce its PAN said: "Governors recognise that the Local Authority and Guiseley School have different responsibilities and priorities.....on this occasion, the Local Authority's commitment to ensure....sufficiency for all children within the Leeds school system compromises Guiseley School's ability to optimise a cost-effective curriculum led financial planning model..... In summary, Guiseley School, as a community school remains supportive of the principle behind the Local Authority's decision making, but this cannot be at the expense of the school's financial security."

26. The school is not a community school, since if it were, the LA would be the admission authority, and it would have determined the PAN it considered appropriate for admissions to the school in September 2022. Neither is it the case that the LA has a "commitment" to ensure that there are sufficient school places for children. This is a legal duty imposed on it by Sections 13 and 14 of the Education Act 1996.

27. I have seen nothing which persuades me that the LA's current projections of the need for local places in Year 7 in 2022 are erroneous. Indeed, the latest information about the number of children admitted to the school in September 2021 provides validation of the stance it has taken on this matter. I therefore take the view that its concern that the school's PAN of 210 will result in there being insufficient local school places is likely to be accurate. In my view, any risk that there may be insufficient school places for children far outweighs any potential risk of the sort which the school has sought to persuade me exists, and concerning which I have already stated my views.

28. It is also the case that if the school's PAN is set at 210 for 2022, then neither the LA nor any other body or person could object if it remained at that level in future years. Paragraph 3.3 b) of the Code makes clear that it is not possible to make an objection to a decision by an own admission authority school such as this to "increase or keep the same PAN". Moreover, the school's capacity is not reduced by a PAN reduction and so the LA would not be funded to replace these places elsewhere if it needed to, because such funding is based on school capacities in the LA's area, not their combined PANs.

29. I uphold the objection to the PAN of 210 which has been determined as part of the school's admission arrangements for September 2022.

Other matters

30. The school has accepted that the phrase "parents who put their nearest school" is unclear, and have helpfully expressed a willingness to change the wording to "parents for whom Guiseley School is their nearest school". However, as determined, the arrangements were unclear and in breach of paragraph 14 of the Code. In addition, "nearest school" has the effect of creating a polygon the edges of which will be determined by the locations of other schools in relation to the school. To put it another way, for every address the school

either is or is not the nearest school and thus a geographical area is created. Because priority is given to those who live within that area, it amounts to a catchment area and paragraph 1.14 of the Code requires that it is clearly defined. This might be by a map or by a list of post codes or streets. Furthermore, without such information, it is entirely unclear how parents can be expected to know whether or not Guiseley is their nearest school. For some addresses this will be obvious, but for addresses which are roughly equidistant between the school and another school this will not be the case and nor do the arrangements make clear which schools are taken into account in deciding whether Guiseley is the nearest school – other than, as I note below, to state that St Mary’s Menton is not so taken into account.

31. The school has told me that the phrase “...you must preference our school to be allocated a place...” refers to the practice of the LA of offering places at schools which have a vacancy to children who have not been offered a place at any of the schools for which their parent has expressed a preference. It has told me that the LA has previously asked it whether it would admit children for whom that was the case, and that it had declined to agree to do so. The school therefore clearly felt that including a reference to this practice in its arrangements was appropriate, and the LA has not commented on this matter in correspondence concerning the objection, and had in fact itself suggested alternative wording for this part of the school’s arrangements in its response to the school’s consultation about these in November 2020. I can only conclude that the LA therefore views this as appropriate practice. I shall return to this below.

32. In response to my concern, the school suggested that it might insert wording into the arrangements which would state that this condition did not apply to in-year applications made after the start of the academic year. However, my concerns about the clarity of the arrangements stemmed from my expectation that in order to be clear to parents reading them, admission arrangements should be in everyday English which uses standard grammatical conventions. According to the Oxford English Dictionary, the word “preference” is a noun and not a verb, and so I would have expected to see a phrase such as “...you must express a preference for...” in a school’s admission arrangements.

33. I am also slightly puzzled by what the school has told me about the practice of the LA in this matter, although I do not doubt its accuracy, for the reason I have given above. A parent may apply for a place at any school at any time (Code, paragraph 2.21, and 2021 Code, paragraph 2.23) and if there is a place at a school, the child must be admitted (Code, paragraph 15 d and paragraph 1.6). So if a parent expressed a desire for their child to be admitted to a school with a vacancy, after the normal admission round had been concluded and before the start of the relevant school year (a late application) a school must admit the child. The Code also says at paragraph 2.11 in connection with the normal admission round that “If the local authority is unable to offer a place at one of the parents’ preferred schools it **must**, if there is a place available, offer a place at another school.” It is my understanding therefore that there is no basis for a state-funded school (a school to which the Code applies) to refuse to admit a child under these circumstances if requested to do so on behalf of a parent by the LA. It therefore seems to me that the LA may need to reconsider

its approach concerning this matter. It is the case that a child would not automatically be considered for admission to a school in the normal admission round if parents had not expressed a preference for it, but that is another matter. Any reference in admission arrangements to the consequences of not expressing a preference for a place at the school must be clear, and for the reason I have given that is not the case in the arrangements determined by the school, which fail to comply with paragraph 14 of the Code.

34. Again, the school has accepted that the oversubscription criterion and accompanying footnote:

“Priority 4 We will give priority to parents who choose Guiseley school, when it is not the one nearest to their home address (see note 6).

Note 6 The nearest priority area has been defined by the straight-line distance between our school and the next nearest school that is non-faith based admission policy.”

could be more clearly worded, and have suggested an alternative for the oversubscription criterion itself which is helpful, as it makes clear that this priority applies only after that given to parents whose homes are nearest to the school. However, as the arrangements were determined, this was not evident and made them unclear in my view and in contravention of paragraph 14 of the Code.

35. The school has also suggested that the footnote might refer to the “nearest school” rather than to “the nearest priority area”, and this is helpful as I can see no meaning in the phrase used in the determined arrangements, since there is no area involved in this oversubscription category (as distinct from the criterion which gives priority to children for whom the school is the nearest). However, it also seems to me that it makes no sense to refer to the distance between the school and another school when setting out how the school nearest to a parental home is determined. Logically, there must be a comparison between the distance from the home to the school and the distance from the home to the other school to decide which is the nearer, but the arrangements do not say this. The determined arrangements also say that St Mary’s Menton is not considered as a potential nearer school for a parent, because it gives priority on the basis of faith criteria, not on the basis of distance from the school. The phrase “...that is non-faith based admission policy...” that is used to say which schools are considered in this comparison is not clear in my view since a school is not its admission arrangements, but may utilise or employ arrangements that have a particular nature. As determined, the footnote was also unclear and did not comply with paragraph 14 of the Code.

Summary of Findings

36. I have explained my reasons for upholding the objection to the PAN of 210 which was determined by the school as part of its arrangements for September 2022.

37. I have also set out the ways in which the arrangements as determined failed to comply with the requirements of the Code concerning their clarity.

Determination

38. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the Governing Board for Guiseley School, Leeds.

39. 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.

40. 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 PAN must be revised prior to the closing date of 31 October 2021 for applications to be made for places at the school in September 2022, and that further revisions must be made within two months of the date of this determination.

Dated: 20 October 2021

Signed:

Schools Adjudicator: Bryan Slater