



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3355

Objector: A parent

Admission Authority: The academy trust for Dame Alice Owen's School, Hertfordshire

Date of decision: 5 June 2018

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the academy trust for Dame Alice Owen's School in Hertfordshire for admissions in September 2019.

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 a parent (the objector), about the admission arrangements (the arrangements) for Dame Alice Owen's School (the school), a partially selective academy school for pupils aged 11 to 18 for September 2019. The objection is to the provision in the school's oversubscription criteria that sets out how the school considers whether applicants are permanent residents in the area.

Jurisdiction

2. The terms of the academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the academy trust, which is the admission authority for the school, on that basis. The objector submitted the objection to these determined arrangements on 8 February 2018. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
 - a. the objector's form of objection dated 8 February 2018, supporting documents and subsequent submissions;
 - b. the school's response to the objection and subsequent submissions and supporting documents;
 - c. the response of Hertfordshire County Council which is the local authority (LA) for the area;
 - d. the LA's composite prospectus for parents seeking admission to schools in the area in September 2018;
 - e. confirmation of when consultation on the arrangements last took place;
 - f. copies of the minutes of the meeting at which the academy trust determined the arrangements; and
 - g. a copy of the determined arrangements.

The Objection

5. The objection is to the provision in the oversubscription criteria that defines how the school considers if applicants are permanent residents in the area. In 2016, the definition was that if a family moved closer to the school and retained a second home within 50 miles of the school, it needed to have resided in the new home for 24 months to be considered permanently resident there. In 2018 this time period was increased to 36 months and for the 2019 arrangements this time period has remained at 36 months. The objector asserts that this definition contravenes paragraph 1.8 of the School Admission Code (which requires that arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group.....), on the basis that the definition disadvantages people who own another house within 50 miles of the school.
6. The objector believed that he met the 24 month criterion but does not meet the new 36 month criterion and as a result he feels that his family and other families in a similar position are being disadvantaged.

Background

7. The school became an academy in 2011 converting from voluntary-aided status. It is a partially selective school in accordance with the provisions of section 100 of the Act and it also selects up to ten pupils on the basis of aptitude in music in accordance with section 102 of the

Act. It is a very long established school under the trusteeship of the Worshipful Company of Brewers. It is located in Potters Bar in Hertfordshire, but was previously located in London and has a historical association with the London Borough of Islington, which is recognised in its admission arrangements. The school has a published admission number (PAN) of 200 for Year 7 (Y7). The school is oversubscribed and in 2018 it received 359 first preference applications and a total of 819 applications.

8. The school chooses to give some priority to local residents and allocates 22 places annually on the basis of distance from the school. In its response to my enquiries the school says that it wishes to ensure that local people can gain places at the school. It adds that there has been a historical problem with families renting or buying houses near to the school in order to qualify for a local place and, having gained a place, moving back away from the area. There have been examples of families buying a house near the school and renting their original family home while a school place was gained and then returning to the original family home.
9. In order to address this issue the school introduced some rules about residence. The one that is relevant to this objection and which gives priority to permanently resident local children, says:

“Oversubscription criteria 2 and 7 (Locality places)

Address evidence is frequently requested, monitored and checked and school places will be withdrawn when false information is deliberately provided.

*The Governors will refuse to allocate a place where they consider that the permanent home address as stated on the application form is a **temporary address** even if the child is living in this property. **If the child has changed addresses within 36 months before the date of application, but a property that was a previous home address has been retained (where it is less than 50 miles from the school), an application from a property closer to the school will be treated as a temporary address regardless of whether the child is living in the property Monday-Friday and/or regardless of whether the previous home address is leased to a third party.** The governors will make their decision based on such evidence as they reasonably require.*

If a child is offered a place at the school under oversubscription criteria 2 or 7 based on the address where the child is living at the date of application, but the child then moves further away from the school before he or she is due to start at the school, the place will normally be withdrawn. If the child moves further away from the school at any time during his or her first term at the school the place will be withdrawn where it was fraudulently obtained.”

Consideration of Factors

10. The school has made it clear that it wishes within its arrangements to give some priority to children who live locally. This criterion was introduced by the school in 2008 and provided for 22 places each year to be allocated on the basis of distance from the school. The Code in paragraph 1.13 requires the admission authority to “*clearly set out how distance from home to school will be measured, making clear how the “home” address will be determined....*”. The school in its admission criterion set out above makes this clear.
11. The school also points out that it has a long standing issue where some parents choose to move into a house, either rented or purchased, near to the school for the purpose of obtaining a place at the school and who then move back to their original, more distant, dwelling once the place at the school has been obtained. In its submission to me, the school reported that following the introduction of the distance criterion in 2008, by the 2010 admission year half of the families who had been allocated places in 2008 on the grounds of distance had moved back to their original homes that were further from the school. The trust felt strongly that this practice made it less likely that long-standing local families would be successful in gaining one of the places allocated on the basis of distance.
12. As a result, the school clarified how it would determine the home address for admission purposes. It made it clear that if a family moved into a house near the school and retained their previous house then the family would not be considered to be permanently resident unless they lived in the new house for 24 months prior to applying for a place or they provided evidence that the original house had been sold. For the 2018 and 2019 arrangements, this time period was changed from 24 months to 36 months. The objection that I am considering asserts that this time period disadvantages those families who have moved into the area less than 36 months before applying for a place and do not wish to sell their former home.
13. In considering this matter, I have already concluded that the use of distance as a criterion complies with the Code in paragraph 1.13. The school has also set out clearly how a “home address will be determined” in its admission arrangements as required by paragraph 1.13 of the Code. The issue that I must now consider is whether the time period set out in the criterion has disadvantaged any children. The objector believes that this is in contravention of paragraph 1.8 of the Code.
14. Paragraph 1.8 of the Code refers to disadvantage to “*a child from a particular social or racial group...*”. Although the objector asserts that the disadvantage is to those families to whom the criterion applies, I have been shown no evidence that there is in fact a social or racial group of families who are affected by this change. There is at least one individual affected by this change as evidenced by this objection. I do not, however, think that this provides the evidence that paragraph 1.8 is

applicable here.

15. Having concluded that paragraph 1.8 does not apply, I have also considered whether the definition of home in the arrangements contravenes the requirement in paragraph 14 of the Code for arrangements to be “fair”. In this circumstance, the school has been clear what it is seeking to achieve – places available for local children who will not move away from the area once a place has been gained thus preventing another local child from gaining the place. For 2018 admissions, the school reported that there were 38 applications seeking priority under the local places criterion. Of the 38, 29 had been living in the area since 2014, nine of whom had been living in their houses since birth. Six applicants moved into the area within the time period but provided evidence that they had sold their previous dwelling and three applicants had moved into rented accommodation with a history that demonstrated this was part of their normal living pattern. The school has been clear in what it is seeking to achieve and I am satisfied that the arrangements are fair for local children who can seek a place on the basis of distance. They are also fair for people moving to the area on a permanent basis as they will be considered to be local and places allocated on the basis of distance. The objector considers that the arrangements are unfair because he does not wish to sell his former home in order to be considered a permanent resident.
16. The objector asserts that there is disadvantage for three reasons. The first is that the change was made without considering those in his situation. The second is that although he agrees with the school’s assessment of other people’s behaviour and the propensity to move away from the school having gained a place on distance grounds he says that this does not apply to him. The third is that he tried to contact the school about possible changes and was dissatisfied with the information provided. The objector confirms that he was aware of the 24 month residence rule that applied at the time and at that time decided that the family would not sell the previous family home because they believed that the 24 month residence would continue to apply and make the family eligible as a permanent resident. When it moved to 36 months it became evident that the family would not be considered to be permanently resident.
17. Paragraph 1.42 of the Code sets out the consultation required when a change to admission arrangements is proposed. The school has provided evidence that it complied with these requirements for consultation at the time of the change. The key issue here is that the objector made assumptions about the definition that would be applied in the future. However, the school is required by the Code to determine its arrangements each year and may change its arrangements each year, if it wishes, provided that it follows the required procedures for consultation. In this case, the school chose to make a change and followed the required procedure. The objector attempted to obtain information from school staff about possible changes to the arrangements before they had been determined and is dissatisfied about the response received. I have not investigated the nature of the

interaction because it is not possible for any person to say what is in determined arrangements until they have been determined. Possible changes were described in the consultation that is required and that is the best available information before any changes are determined.

18. The objector understands the definition that is being applied and is also aware that the residence period only applies to a family that retains, for whatever reason, its former family home. It is entirely clear what the definition is and if the family does not meet the residence period and has retained its former family home it is self evident that it will not meet the definition. The objector decided not to sell the former family home and gave reasons for not doing this. However, in making this decision, the objector will fail to meet the definition that his family seeks to meet.
19. I have been asked to consider whether this definition is disadvantaging the objector and his family. While I have considered that the family is not part of a particular social or racial group and so do not think that paragraph 1.8 of the Code applies, I have considered whether the arrangements are unfair to the objector and his family. I do not think that this definition in itself makes the arrangements unfair, the decision rests with the objector and whether or not he wishes to be considered against the school's definition of "home" or not.

Conclusion

20. I have determined that the school has not contravened the Code in setting its residence definition in its 2019 admission arrangements and I do not uphold this objection.

Determination

21. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the academy trust for Dame Alice Owen's School in Hertfordshire for admissions in September 2019.

Dated: 5 June 2018

Signed:

Schools Adjudicator: David Lennard Jones