



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3757

Objector: A member of the public

Admission authority: The Arthur Terry Learning Partnership on behalf of The Arthur Terry School, Sutton Coldfield, Birmingham

Date of decision: 15 April 2021

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 for September 2022 determined by The Arthur Terry Learning Partnership for The Arthur Terry School, Sutton Coldfield, Birmingham.

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 member of the public, (the objector), about the admission arrangements (the arrangements) for The Arthur Terry School (the school), an 11-18 mixed academy school for September 2022. The objection is to the point at which the school measures distance from applicants' homes. The objector suggests the point is not fair to families living on one side of the school; he further suggests that the point used may mean that there is an element of indirect discrimination on the basis of race in the admission arrangements.
2. The local authority for the area in which the school is located is Birmingham City Council. The local authority is a party to this objection. Other parties to the objection are the objector, the school and the academy trust.

Jurisdiction

3. The terms of the Academy agreement (clause 13c) between the multi-academy trust and the Secretary of State for Education require that the admissions policy and

arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the academy trust, which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 28 February 2021. 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

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
 - a. a copy of the minutes of the meeting of the Trust Board at which the arrangements were determined;
 - b. a copy of the determined arrangements;
 - c. the objector's form of objection dated 28 February 2021, supporting documents and subsequent correspondence;
 - d. the academy trust's response to the objection;
 - e. the local authority's response to the objection;
 - f. maps of the area provided by the objector and from research;
 - g. details of a successful appeal hearing held in respect of the 2019 admissions.

The Objection

6. The objector cites the fairness of the admission arrangements in relation to the point at which the distance from the school to home is measured. He believes that this is unfair to families living in a particular postcode. He further suggests that, by the approach taken to measuring the distance the school may be directly or indirectly positively discriminating to the benefit of a particular ethnic group.

Background

7. The school is an 11-18 mixed academy school with 1755 pupils on roll. At its last Ofsted inspection in 2009 it was rated outstanding. The academy trust, which is the admission authority for the school determined the admission arrangements for September 2022 at a meeting on 1 February 2021. The school has a Published Admission Number (PAN) of 270 and is heavily oversubscribed. First preference applications numbered 313 for admission in 2019 and 303 for both 2020 and 2021. The admission arrangements have the following oversubscription criteria;

- i. Looked after and previously looked after children.

ii. Siblings

iii. Distance from academy.

The arrangements state that priority is given to those who live nearest the academy calculated on the basis of a straight-line measurement between home and academy. In the notes section this is further explained as ‘Distances are calculated on the basis of a straight-line measurement between the applicant’s home address and the school front gates. The local authority uses a computerised system which measures all distances in metres. Ordnance Survey supply the co-ordinates that are used to plot an applicant’s home address and the address of the academy.’ In the local authority’s composite prospectus, the definition of ‘the school front gates’ is further defined as ‘the main gates in question are those at the end of Kittoe Road’.

8. The objector’s son was refused a place at the school on distance grounds for admission in September 2019. After a successful appeal a place was provided at the school. The appeal focused on medical needs and the appeal was supported by medical and support professionals and the primary school which he attended. The appeal’s report was clear that the school’s admission arrangements were in line with the Code and the law, that the school had correctly applied the arrangements and that admitting the child would cause prejudice to the school’s ability to provide its pupils with an efficient education and with efficient use of resources. However, the panel agreed that this prejudice was outweighed by the prejudice which would be caused to the child by not being admitted to the school; it therefore allowed the appeal.

9. The objector says that the admission process left him and his family drained, frustrated and angry that they had to go through an incredibly stressful experience. He believes that the issue is the point on the school premises from which distance to home is measured and he has objected so that another family does not have to go through the same process. He says, ‘this issue needs to be resolved’.

Consideration of Case

10. There are two main parts of this objection;

- The fairness of the admission arrangements in relation to the point at which the distance from the school to the home is measured in accordance with paragraph 14 of the Code (“In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective”). The objector believes that as the main school gates (the point from which distances are measured) is on the opposite side of the school to where he lives that this is therefore unfair. He provides details of the two post codes which are predominantly served by the school, B74 and B75. He provides details of the proportions of secondary school age children who live in the postcodes and also the proportions who attend the school as follows;

| POSTCODE | PROPORTION OF GENERAL POPULATION | PROPORTION OF SCHOOL POPULATION |
|----------|----------------------------------|---------------------------------|
| B74 | 49% | 51% |
| B75 | 54% | 46% |

The objector believes that these figures, which show that a greater proportion of the school population lives in B74 than in B75, confirm that the measuring point is biased towards one area and therefore the school population does not mirror the community it is meant to serve.

- The admission arrangements in respect of equality; specifically paragraph 1.8 of the Code (“Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group”), the Equality Act 2010 (“Admission authorities must have due regard to the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity and foster good relations in relation to persons who share a relevant protected characteristic and persons who do not share it”) and the Human Rights Act (“Where possible a public authority should try to ensure that policies or decisions do not involve any form of discrimination on any ground”). Using the figures from the table above, the objector states that the use of the measuring point from the main school gate on Kittoe Road is resulting in discrimination against children and families living on the right side (East) of the school (in postcode B75). He suggests that this is in breach of the Equality Act. He goes on to say that the B74 postcode has ‘20 per cent more residents from an ethnic background’ and as the measuring point gives an admission bias towards the B74 postcode, he asks that question ‘does this amount to positive direct discrimination under the Equality Act?’.

11. In its response to the objection the local authority says that the admission arrangements do not breach the Code when it states that the point from which the school measures distance to home is ‘the main school gate on Kittoe Road’. The local authority says that; ‘this is the point at which distance has been measured for at least the last eighteen years. The point was decided by the headteacher at the time when the school was a community school before it converted to an academy in 2012. It suggests that the impact of moving the point to the centre of the school, as suggested by the objector, would have a potential and unexpected detrimental impact on some local residents’ ability to access a place at their local school and also the potential impact on the admissions patterns of surrounding schools in the area. This change would inevitably benefit some residents at the same time it will certainly disadvantage others.’

12. The academy trust responded on behalf of the school. In its response to the first point of the objection it says that the admissions process is delegated to the local authority through buying in their services and that they have nothing further to add to the response made by the local authority. In response to the second element of the objection the trust

states that the admission arrangements are in full compliance with the admissions code. The response makes no comment about the equality issue.

13. I have considered the maps provided by the objector and also researched the area on Google earth and maps. An aerial view of the academy site shows one vehicular entrance to the school on Kittoe Road. This is also the address of the academy. The school site is roughly rectangular with this vehicular entrance on the west side. The south and north sides of the school site are bordered by residential properties and the east side is bordered for its full length by a railway line. From the maps it can be seen that there are clearly some other pedestrian access points to the school site but only one main entrance. The objector lives to the east of the school. The local authority reports that the cut off distance for admissions in September 2019 was 1521 metres. From an analysis of the maps, it is clear that the objector lives very close to this cut off point and it is likely that, if the measurement point had been from the centre of the school building rather than at the school gate, then his son might well have been admitted under the normal processes without the family having to go through an appeals process.

14. The point at which a school measures distance from home is a decision made by the admission authority. In this case, when the school was a community school the local authority took recommendations from the headteacher at the time and, as the then admission authority, agreed that the measurement point would be the main school gate on Kittoe Road. This has remained part of the admission arrangements since that time. There is nothing in the Code or the law which prescribes where the measuring point should be on a school site. As the objector has reported, admission authorities use different points. Some local authorities use a point in the centre of the school buildings for their community schools. Some faith schools which serve a particular community use the centre of that community or the church or other faith building as a measuring point. In some cases, particularly where a school is newly built and is some distance from its traditional catchment area the measuring point may be a point within that community. The objector suggests that distances should be measured from the centre of the school site; he says that by doing this it would make the admissions rules 'fair'. He says that it 'just requires some clear instructions from the Department of Education and the Minister of State'. As an adjudicator I do not have the jurisdiction to change education policy or, indeed, the provisions of the law or the Code: my sole function and power is to determine whether or not admission arrangements conform with the law and Code. It is for the admission authority – as the Code makes clear – to decide what point is to be used for the purposes of measuring the distance to home. The admission authority has determined that the measuring point will be the main school gate, I can confirm that this point is compliant with the Code and the law. However, whatever point is chosen, the arrangements must also conform with the broader requirements as to fairness, reasonableness and conformity with equalities law. I will now address those broader matters.

15. The objector compares population proportions in two postcodes in terms of general population, school population and ethnicity. He makes the statement that the imbalance in these statistics serves to prove that the measuring point provides a bias towards one postcode area over the other. He also makes the point that this means that the school

population does not mirror the community it is meant to serve. It is important to note that this school does not have a specified catchment area. Paragraph 1.14 of the Code explains that schools may have a designated catchment area which must be designed so that it is reasonable and clearly defined. The arrangements do not specify a geographical area from which the school will admit children and there is no reference in the admission arrangements to the school serving the two postcodes identified by the objector. The admission authority has determined that admissions criteria will use distance from the school and not catchment areas. Paragraph 1.13 of the Code explains this criterion 'admission authorities **must** clearly set out how distances from home to the school will be measured, making clear how the 'home' address will be determined and the point in the school from which all distances are measured'. The school's admission arrangements are clear on this point and comply with the Code and the law. By using distance rather than catchment area there is no requirement for the school to admit equal proportions of children from the two postcodes. The numbers, proportions and ethnicity within the school population will depend entirely on where the family lives within the concentric circle of cut off distance for the particular intake. In this respect the admission arrangements are compliant with the Code and the law.

16. A study of secondary schools in the area shows that there are ten secondary schools within five miles of the objector's home which are not selective or designated faith schools. The appeal notes show that the school offered to the objector's son was not one of these school and was considerably further away. I cannot comment on this, but it is useful to note that families in a similar situation to the objector would be able to make preferences for these nearer schools. Whatever oversubscription criteria are used, they will advantage some and disadvantage others. For arrangements to be found to be unfair there would need to be an identifiable group who suffered some disadvantage not just in not being able to secure a place at this school but, for example, facing a significantly longer or more difficult journey to an alternative school. I have been provided with no evidence that this is the case here.

17. The objector believes it is unfair and unequal that families living in the B74 postcode are more likely to be successful in their application to the school and therefore he believes that this contravenes the Code and the law. He cites particularly, paragraph 14 of the Code which says that 'admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective'. The fairness of the criteria in this case is demonstrated by the fact that families living an equi-distance from the school as the objector would also have been unsuccessful in their application. Taking the 2019 admissions as an example, all those applications from families living more than 1521 metres from the school gates would have been unsuccessful whether they live in B74 or B75 postcodes. This provides the equality and fairness element of the oversubscription criteria. Many unsuccessful families will feel it is 'unfair' because their child was not offered a place, however when a school is oversubscribed the oversubscription criteria are in place in to ensure fairness and equality in the area. Moving the point of measurement to the centre of the school building, as suggested by the objector would simply move the centre of the distance circle towards the east of the school. This may enable families living near the

objector to gain admission for their children, but it would also mean that another group of families, on the west side of the school would be unsuccessful.

18. The second part of the objection cites the Equality Act. The objector suggests that because the measuring point at the gate on Kittoe Road results in more children living on the left (west) side of the school gaining admission. He further argues that that because more children in this area are from non-white communities, there is discrimination on the basis of race against children and families living on the right (east) side of the school site in postcode B75. I have a number of points to make here. First, the objector refers to direct discrimination. This is always unlawful in the case of school admissions and would occur if the arrangements gave priority on the basis of race. They categorically do not and there is no discrimination on the basis of race. The arrangements do not take race into account. This leaves the question of whether there is indirect discrimination. This occurs when there is a policy that applies in the same way for everybody but disadvantages a group of people who share a protected characteristic. It is a defence against indirect discrimination if the policy amounts to a proportionate means of achieving a legitimate aim. In this case the school's aim is to admit those who live closest to the chosen measuring point. I have not been provided with any evidence that this does in fact disadvantage white children – whether it does will depend on a number of factors such as the distribution of communities within the postcodes and the preferences expressed for places at the school. However, and in any case, my view is that if there were to be any such disadvantage, the school's approach would fall squarely within the realm of being a proportionate means of achieving a legitimate aim. The arrangements use distance from the school and not catchment areas as the priority order for admission and therefore there is no requirement for the school to admit equal numbers from the two postcodes. The makeup of the intake in terms of numbers and ethnicity will be determined by families living within a particular distance from the school and not by postcode and this is compliant with the Code and the law.

19. I am therefore of the view that the oversubscription criteria cited by the objector are fair and that they conform to the law and the Code. I therefore do not uphold this objection.

Summary of Findings

20. When a school is oversubscribed, there will inevitably be disappointed families whose children miss out on a place at their preferred school. The Code seeks to make it clear how admission arrangements and particularly oversubscription criteria will provide a priority order for applicants and this will always mean that there will be a cut-off point, leaving families above this cut off point feeling upset and angry. I fully understand why the objector was upset that his son was offered a school some distance from his preferred school and I am pleased that the appeals panel determined that the appeal should be upheld in view of the child's needs. However, the school complies with the Code and the law by specifying a particular point from which the distance to home is measured. Moving this point is a matter for the admission authority who have determined that they do not wish to do this. If they did move the point, then there would be disappointed families living in the other direction from the school. The measuring point has been established for a long time and there is therefore an expectation in the local authority, the community, local primary

schools and in other local secondary schools that this will remain the same. There is no requirement in the Code or the law that this point should be changed.

21. There is no designated catchment area for this school and no requirement for the school to take equal proportions of children from the two local postcodes. I am satisfied that the school's admission arrangements are compliant with the Code and the law and I therefore do not uphold this objection.

Determination

22. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2022 determined by The Arthur Terry Learning Partnership for The Arthur Terry School, Sutton Coldfield, Birmingham.

Dated: 15 April 2021

Signed:

Schools Adjudicator: Ann Talboys