

DETERMINATION

Case reference: VAR 502 & 503

Admission Authority: Barking & Dagenham Local Authority

Date of decision: 10 June 2011

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I do not approve the variation to the admission arrangements determined by Barking & Dagenham Local Authority on behalf of Barking Abbey School and Robert Clack School.

The referral

1. The London Borough of Barking & Dagenham (the Council) has referred a variation to the Adjudicator about the admission arrangements for Barking Abbey Comprehensive School (Barking Abbey) and Robert Clack Comprehensive School (Robert Clack) for September 2012. Both schools seek a variation of their admission arrangements to permit them to admit an additional number of pupils on the basis of their high aptitude for sport.

Jurisdiction

2. The referral was made to me in accordance with section 88E of the School Standards and Framework Act 1998 (the Act) which states that:

“where an admission authority (a) have in accordance with section 88C determined the admission arrangements which are to apply for a particular school year, but (b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined, the authority must [except in a case where the authority’s proposed variations fall within any description of variations prescribed for the purposes of this section] (a) refer their proposed variations to the adjudicator, and (b) notify the appropriate bodies of the proposed variations”.

3. I am satisfied that the proposed variation is within my jurisdiction.

Procedure

4. In considering this matter I have had regard to all relevant legislation, guidance and the School Admissions Code.
5. The documents I have considered in reaching my decision include:
 - i. the council’s letters of referral of 5th April 2011 and supporting documents;

- ii. the determined arrangements for 2012/2013 and the proposed variation to those arrangements;
- iii. a copy of the council's booklet for parents seeking admission to schools in the area in September 2012 ;
- iv. a copy of the letter dated 5th April 2011 notifying the appropriate bodies about the proposed variation; and
- v. a copy of the letters dated 18th April 2011 consulting the statutory admissions consultees about the proposed variation at each of the schools
- vi. a paper dated 9th May outlining the testing of sporting aptitude the schools propose to use

Consideration of Factors

6. The Admissions Code 2010 (the Code) states

Selection by aptitude in sport and PE, the visual and performing arts and modern foreign languages can play an important part in widening access to particular schools. Section 102 of the SSFA 1998 allows the admission authority for a school with a specialism in one or more of the prescribed subjects to give priority to up to 10 per cent of children who can demonstrate an aptitude in the relevant subject. This flexibility is not restricted to schools in the specialist schools programme, but does require that the school has a particular expertise or facility. (2.78)

7. Neither school is a specialist sports school, but each has a recognised expertise and facility in sport. For example, I have seen a letter from British Performance Basketball naming Barking Abbey as the first ever Regional Institute of Basketball. Robert Clack has proven expertise in athletics, football, netball and rowing, and a national reputation in gymnastics and rugby. Both schools are constantly heavily oversubscribed. Roughly 6 children have been applying for each place at Barking Abbey, and 5 for each place at Robert Clack.
8. For some years the Council has received a number of letters from parents who believe that their children have particular aptitude in sport and would benefit from the expertise of the two schools. However, the admissions policy, which is largely determined by distance from the school, means that those living at a distance from the schools have no chance of being offered a place, even if they would benefit from the schools' expertise in sport.
9. With the Olympic Games happening nearby in 2012, discussions had been taking place with a view to Barking & Dagenham being designated an Olympic Borough.
10. In the light of these two matters (paras 8 and 9), the governing body of Barking Abbey (February 8th) agreed to go forward for consultation with a view to admitting up to 9 children (3% of the admissions number) on the basis of their high aptitude in sport, and to do so by increasing the school's

admission number for Year 7 intake from 270 to 279 per year group. Other schools in the area already admit to their limit, so providing an additional 9 places will not affect other children applying for Barking Abbey, nor their neighbouring schools. It was recognised that this would become effective for those being admitted in September 2013.

11. At the meeting of Robert Clack's governing body on February 7th, they reached a similar decision. They seek to admit up to 15 students (5% of the admissions number) on the basis of their sporting aptitude, but within their current admission number of 300. This should not have a detrimental effect on neighbouring schools, in two of which there are surplus places. It will have a small effect on those applying on the criterion of distance, which is currently all applicants except those in care of a Local Authority.
12. 3% and 5% are within the limit of 10% set by the Code (2.78), by Section 102 of the Schools Standards & Framework Act 1998, and regulation 5 of the Admission Arrangements Regulations.
13. There are no other secondary schools within a 3 mile radius that have a sports specialism of any kind. All were consulted in April and no comments were received.
14. In January 2011, the neighbouring Local Authorities and the Anglican and Roman Catholic Dioceses were consulted about the proposed changes, albeit at that stage, for September 2013. The only response was from the London Borough of Havering. They had no problems with the proposals, but remarked that *"how aptitude in sport is to be judged needs to be thought through very carefully if the schools want to avoid problems"*.
15. It was announced in late February 2011 that Barking & Dagenham had indeed been designated the 6th Olympic Borough, but by this time it was too late to consult for admissions in September 2012. So both governing bodies have asked the Adjudicator to allow an in-year variation in order to allow the changes to take effect for September 2012, the Olympic year. They will each then consult formally about whether this should become a permanent arrangement from September 2013.
16. The Council and both schools argue that the designation as Olympic Borough, which will have particular resonance during the Olympic year 2012), creates a major change in circumstances which has led to their request.
17. Although clearly a unique event, I am not convinced that this actually does constitute a major change of circumstances such that the determined admission arrangements should be varied. A major change of circumstances *"is considered to be a serious and unexpected event affecting the provision of education at the school"* (para 4.25 of the Code). It is difficult to see how the designation of Barking & Dagenham as an Olympic Borough could be said to affect the provision of education at the school.

18. The LA and the schools could justifiably have conducted formal consultations in the normal way with a view to changing the admissions criteria for September 2012. The fact that the Olympic Games are coming to Britain and that the local area will be a particular focus for the event has been known for some time but is not relevant to whether the schools could consult on and adopt admissions arrangements giving priority on the basis of aptitude for sport. Both schools have an expertise in sport and so would have been entitled to adopt partial selection admission criteria regardless of whether or not there had been a bid for Olympic Borough status by the LA.]
19. The schools have already given detailed consideration to the process whereby they might plan to select children on the basis of their aptitude.
20. The Act, in section 102, and regulations made under it allow selection by aptitude in certain subjects, in defined circumstances and with defined conditions. This is supported by 2.78 of the Code. As schools specialising in, among other things, sport, they are allowed to select 10% of their pupils on the basis of aptitude in sport. However, in subsection (2), the section then disallows such selection by ability:
- “if the arrangements make provision for any test to be carried out . . . which is either a test of ability or one designed to elicit any aptitude of his other than for the subject or subjects in question”.
21. The Act, in section 99 (5) (b) defines ‘ability’ as: “either general ability or ability in any particular subject or subjects”.
22. The Code, at 2.80, says:
- a ‘A child with aptitude is one who is identified as being able to benefit from teaching in a specific subject, or who demonstrates a particular capacity to succeed in that subject. When considering whether the child has an aptitude for a subject the admission authority *must* determine whether a child demonstrates a particular capacity to learn or to develop skills in that subject, and that he or she can benefit from the particular expertise and facilities at that school’; and,
- at 2.93, it says:
- b ‘Tests, assessments or auditions used to identify whether a child has an aptitude for a particular subject *must* be objective, have a distinctive subject focus and *must not* discriminate against applicants on the grounds of sex, race, disability or family background. And the assessment *must* test only for the subject aptitude concerned and not for ability or any other aptitude or for prior learning or experience in the subject’.
23. The schools plan to adopt the tests used by The Coopers’ Company & Coburn School. Applicants would undertake a series of tests to look for sporting aptitude in areas identified by Morley & Bailey in 2005. They

identified key traits for talented athlete development, traits that are not based on any particular sport. So, according to the LA's information,

"The applicants undertake a series of tests to look for their sporting aptitude/potential. The tests will judge which of the following skills are evident.

They are:-

- i. Physical Skills - The physical skills and fitness levels needed for success in sport*
- ii. Creative Skills - Making the right decisions/tactics at the right time in pressure situations in sport*
- iii. Personal Skills - Always wanting to win, thriving on pressure, being disciplined and motivated towards achieving the highest sporting performance possible*
- iv. Cognitive Skills - Making the right decisions/tactics at the right time in pressure situations in sport*
- v. Social Skills - Able to communicate with confidence, lead and build professional relationships with those involved in sport."*

24. Paragraph 2.93 of the Code says: 'Tests, assessments or auditions used to identify whether a child has an aptitude for a particular subject *must* be objective, have a distinctive subject focus and *must not* discriminate against applicants on the grounds of sex, race, disability or family background.' The LA are right to ensure that on the test day children are identified only by their first names, and references are not looked at until later. Staff will be given standardisation training.

25. The original proposal included a Supplementary Information Form (SIF) to be completed by those parents wishing their child to be assessed for a specialist place. This form asked for details of the child's membership of clubs and sporting activities. If aptitude is to be measured by standardised tests, as the LA says it is, then parents' responses to questions such as these should have no part in the process whatsoever. If a form such as this is used then it brings other criteria into play than the child's aptitude. In my view, the only need for a SIF in circumstances where a school allocates a proportion of places on the basis of aptitude is for parents to signify their wish for their child to be assessed for aptitude. Nothing more.

26. The LA has therefore decided to withdraw the form they originally proposed. The paper and on line application will simply have a box for parents to tick if they want to be considered for a specialist sporting place. If children are not successful in this, they will automatically be considered under the normal admissions criteria.

Conclusion

27. The Olympic Games will take place in that part of London in 2012. Late in February 2011 the London Borough of Barking & Dagenham were formally designated as the 6th London Olympic Borough.

28. Knowing that discussions about Olympic Borough status were taking place but had not been completed, the schools had consulted about altering their arrangements for September 2013. As schools with a sporting specialism, Barking Abbey and Robert Clack felt that in order to celebrate the Games, and to respond to parental demand, they would like to alter their admissions arrangements in order to enable them to admit a small number of children who show a high degree of aptitude for sport.
29. The announcement was made close to but too late for the deadline for the end of the consultations for 2012 admissions, and the schools considered it to be a serious and unexpected event which constitutes a major change in circumstances. So they have each decided to ask the Adjudicator for an in-year Variation for 2012, the Olympic Year.
30. However, for reasons stated in paragraphs 17 and 18, I consider that this does not constitute a major change in circumstances and therefore does not justify a variation.
31. Finally, partial selection by aptitude is sometimes controversial, particularly in oversubscribed schools such as these. For Robert Clack the proposals could exclude a proportion of children who would otherwise have gained a place at the school on distance. For this reason it is important that proper consultation takes place before such admission arrangements are adopted so that the views of all interested parties can be taken into account,

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I do not approve the variation to the admission arrangements determined by Barking & Dagenham Local Authority on behalf of Barking Abbey School and Robert Clack School.

Dated: 10 June 2011

Signed:

Schools Adjudicator: Dr Stephen Venner