

DETERMINATION

Case reference: ADA/002271

Objector: A parent

Admission Authority: London Borough of Merton

Date of decision: 1 August 2012

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 London Borough of Merton for admissions in September 2013.

The referral

1. Under section 88H (2) of the Schools 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 Wimbledon Park Primary School (the School), a maintained community school for pupils age 3-11 years for September 2013. The objection is to the over subscription criteria priority of siblings and the admission priority area (APA) .The first part of the objection is to the APA itself and associated admission arrangements. The second is that siblings of pupils previously awarded places under the APA arrangements have priority as siblings rather than as residents of the APA.

Jurisdiction

2. These arrangements were determined under section 88C of the Act by the London Borough of Merton, the local authority (LA), which is the admission authority for the School. The objector submitted his objection to these determined arrangements on 31 May 2012. 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).

The documents I have considered in reaching my decision include:

- a. the objector's form of objection dated 31st May 2012 and further correspondence;
- b. the LA's response to the objection and supporting documents;
- c. maps of the area identifying relevant schools;
- d. confirmation of when consultation on the arrangements last took place;
- e. a copy of the determined arrangements for admissions in 2012;
- f. a copy of the determined arrangements for admissions in 2013;
- g. the LA's composite prospectus for parents seeking admission to schools in the area in September 2012;
- h. the variation agreeing the APA dated 4 February 2011;
- i. minutes of the Council's meeting 6 December 2010;
- j. admission arrangements for the London borough of Wandsworth for September 2012; and
- k. the statutory notice and accompanying documents proposing the expansion of the School dated 10 May 2012.

I have also taken account of information received during a meeting I convened on 12 July 2012 at the School attended by the objector, the head teacher and representatives of the LA.

The Objection

The objector raises two main issues with reference to the Code.

4. The first is that children of Wandsworth residents for some of whom the School is their nearest are disadvantaged by the oversubscription criteria and that in the past, children of Wandsworth residents were admitted. Paragraph 1.14 of the Code says "Catchment areas **must** be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment area of a particular school from expressing a preference for the school."
5. The second is that pupils who might have formerly qualified for admission under the distance criterion are disadvantaged because siblings of pupils who gained admission under the APA can obtain admission under the higher priority of siblings rather than be allocated one of the 30 APA places. Paragraph 1.11 of the Code says, "Admission authorities **must** state clearly in their arrangements what

they mean by 'sibling' (e.g. whether this includes step siblings, foster siblings, adopted siblings and other children living permanently at the same address or siblings who are former pupils of the school). “

6. The objector believes these issues to be a contravention of paragraph 12 of the Code which says, "The purpose of the Code is to ensure that all school places for maintained schools.... and Academies are allocated and offered in a fair and open way."
7. In subsequent emails the objector has raised other matters without direct reference to the Code. Some aspects of these concerns are outside legal requirements concerning admissions and the School Admission Code; I cannot comment on those. I am, however, showing the concerns raised, in summary, here;
 - that the School is a community school which means its purpose is to serve the local community regardless of boundaries;
 - that Merton has other schools within a reasonable distance of the School that, though oversubscribed, could offer places to pupils if given priority;
 - that the expansion of other schools changes the circumstances in which the APA was created and that not all the APA places were taken by Merton residents;
 - that the LA would not expand the School if it could not ensure that all the money went on Merton residents only;
 - that Wandsworth Council was forced to react to the LA's plan for an APA by reassuring Wandsworth residents that it would find a way to provide school places for those children effectively displaced by the APA arrangements, that Wandsworth statements do not provide an excuse for Merton to claim that there will be no knock on consequences of the APA;
 - that the APA effectively follows the borough boundary and only deviates in to Wandsworth to take account of those children sufficiently close to have obtained a place under existing catchment rules;
 - Wandsworth residents have not been consulted on the changes to the admission arrangements;
 - that there are numerous situations throughout London where families have to travel long distances to school.

Background

8. The School is an oversubscribed primary school situated to the north of the London Borough of Merton, in Wimbledon. It is the only school in

that locality. There is a grid of residential streets to the north of the School which are in the London Borough of Wandsworth; for many families the School would be their nearest. Some way to the south of the school there are six primary schools, of which five are voluntary aided and for whom the LA is not the admissions authority. The School is expanding from two forms to three forms of entry, by taking three Reception classes each year until September 2017 by which time each year group will have three classes.

9. Merton has seen a 39 per cent increase in the birth rate over the past eight years. This has led to a major and unprecedented increase in demand for primary school places. The LA reports that it has provided 19 additional forms of entry into Reception classes in the last four years and needs further places. It undertook a borough wide consultation in 2010 regarding the primary school expansions required for 2011 and 2012.
10. There were particular problems in the Wimbledon area. These included the proposition of a new school in the area (Gap Road) becoming no longer viable and the decision of the governors of a voluntary aided school, Bishop Gilpin, not to expand their school. The minutes of the Full Council meeting 6 December 2010 report discussion of this and state that the School is ideally placed to meet the need for places where they are most needed in that part of the borough. They considered, at that time, that the School borders Wandsworth and expansion on the basis of distance would mean that at least two thirds of the children attending that school would come from Wandsworth even though there were alternative schools in that area.
11. Consequently, the LA referred a variation to the Schools Adjudicator about the admission arrangements for the School, for September 2011. It proposed the provision of an additional 30 Reception year places for 2011-12 on the basis of an admissions priority area (APA) for the additional 30 places only. This variation was agreed 31 January 2011.
12. The LA decided to permanently expand the School and published the statutory notice on 10 May 2012. The School is expanding to a three form entry school (90 pupils) to offer 630 places plus nursery.
13. The oversubscription criteria for the admission arrangements for 2013/14 are, in summary;
 1. Looked after children or previously looked after children.
 2. Children with an exceptional and professionally supported medical or social need for a place in a particular school.
 3. Those children who have a brother or sister (sibling) registered at the school who will be attending the school at the time of their admission.

4. Other pupils in order of nearness to the school to a maximum of 60.

5. Up to 30 places to children living inside the priority area (APA) in order of nearness of home to the school by straight line distance. If less than 30 eligible offers are made from the priority area, remaining places will be allocated under criterion 4.

Consideration of Factors

Location of the APA

14. The objector's initial concerns were raised when the APA was proposed on the grounds it disadvantaged Wandsworth residents who lived nearer to the School than families in the proposed APA. The School is popular and was rated 'good' at its last Ofsted Inspection. It is certainly closer for some Wandsworth residents than the nearest Wandsworth school. The objector refers to that part of the Code "Catchment areas do not prevent parents who live outside the catchment area of a particular school from expressing a preference for the school", paragraph 1.14 of the Code. Indeed he comments that "the School is a community school which means its purpose is to serve the local community regardless of boundaries."

15. The LA does not regard this as a Wandsworth/ Merton issue but rather as a response to the lack of school places to the south and west of the School. It argues that the difficulties that required its request for an APA are still present, namely:

- Merton's oversubscription criteria for community primary schools generally cover looked after children, priority on medical or social grounds and siblings, followed by straight line distance from the school. Applying the straight line distance criterion to additional places at the School would mean that children to the north of the School who are near more than one school could gain places at the School while those children to the south and west of the School are left without a place at a local school.
- The borough boundary lies close to the north of the school and the Council therefore consulted the London Borough of Wandsworth about this proposal. Wandsworth produced a report on 22 November 2010 which confirmed that its own one to two form of entry expansion plans would provide sufficient places in the area in question to the south of the borough near the Merton border.
- The proposed APA does not follow the borough boundary. It includes part of Wandsworth so would provide some extra places for Wandsworth residents. Where possible, natural boundaries have been used. These include the tube line, the

river Wandle and the main rail line. The area extends further to the south to cover areas where residents are otherwise likely to lack available local schools.

16. This issue is not only about a designated area but also about boundaries between authorities. Parents are entitled to express a preference for a school whether or not the school is in the local authority in which they live. (Section 86(8) of the Act). This was confirmed by the case of *R v Greenwich London Borough Council ex parte John Ball Primary School* (1989) 88 LGR 598 [1990] Fam Law 469.

17. I accept the LA's argument for the location of the APA that;

- there are schools to the north of the perimeter;
- that the perimeter follows natural boundaries;
- the opportunities for expansion are constrained by the surrounding green spaces in the south and west (Wimbledon Park and Wimbledon Cemetery);
- that they consulted Wandsworth who have their own plan to provide additional primary places.

18. I do not consider the LA to have contravened the Code nor the Act in this matter. The LA has a duty under section 14 of the Education Act 1996 to provide sufficient school places for its area. Proximity criteria are still lawful but must be on the basis of objective criteria rather than simply being one local authority area in favour of another. With regard to the designation of the School as a community school, though generally accepted to mean a school serving the neighbourhood, a community school is one maintained by the local authority, previously called a county school.

Alternative Provision

19. When I visited the School on 12 July 2012 I walked around the area both in Wandsworth and Merton. The area around the School is in the main residential and there are no other schools within the immediate locality. Directly to the north of the School there is a "grid" of streets in Wandsworth for whose residents the School would be regarded as their local school. However to the south and west of the school, in Merton, the nearest community school to the south is nearly 2 km and the nearest voluntary aided Church of England school is 1.5 km. The schools to the south are also already heavily oversubscribed and the nearest have already expanded or agreed to do so.

20. I cannot comment in detail about the alternatives for Wandsworth residents as the London Borough of Wandsworth is not party to this matter. I note however that Merton consulted with Wandsworth initially about the APA. I also note that Wandsworth has a programme of primary school expansion. In the locality to the north of the School

there has been an increase in places (with the distance of furthest admission shown) at three schools;

- Southmead 45 to 60 places permanently (offered to 3034m in 2012)
- Riversdale 30 to 60 permanently (offered to 1387m in 2012)
- Earlsfield offered an additional 30 places in 2012; it is not yet known if this will be repeated in 2013 or beyond (offered to 1416m in 2012)

It would appear from these expansions that Wandsworth is making additional provision available in that area of the borough.

21. When considering the use of the APA I have looked to see if there is alternative provision for children within that area. The LA's evidence is that, given the geographical distribution of schools and the heavy over-subscription of schools to the south of the School, without the APA some residents in this area would be left with major journeys (two buses and about an hour of travelling) to reach the nearest school able to offer places. I accept the objector's statement that for some families in London this amount of travel is a necessity but this does not prevent this consideration being a valid one for the LA.

22. My view then is that the APA is still justified to meet the LA's duty to provide places for all its families.

Sibling Criterion

23. The focus of the objector's concern at the meeting of 12 July 2012 was the impact on admissions of the combination of the APA and siblings criteria. The objector believes this to be a contravention of paragraph 12 of the Code. 'The purpose of the Code is to ensure that all school places for maintained schools and Academies are allocated and offered in a fair and open way.'

24. The argument put by the objector is that, setting aside those pupils admitted under oversubscription criteria 1 and 2 (children looked after and medical social needs), priority for the first 60 places was given to applicants who had siblings already in the school regardless of where those children live, that is, families who got an APA place for their child would be eligible to have a sibling place for their other children. This would increase the number of potential sibling entrants and therefore reduce the number of places available on distance in the initial 60 places offered. Residents in the APA would be eligible for the next 30 places; those not taken up would become available on distance criteria. The take up of sibling places is significant at present; slightly more than half the 60 places in September 2011 were given on the basis of sibling connection.

25. At the meeting on 12 July 2012 the option of removing the sibling preference from APA residents was discussed, thus restricting their

application to one of the 30 APA places. The LA does not favour this option. Their view is that arrangements should promote families and their ability to educate their children in the same school as siblings, rather than potentially force an older sibling to change school on the basis that the younger is unable to gain admission and the parent is unable to take children to different schools. To operate a system whereby some siblings are accepted and some treated differently depending on how earlier siblings gained places would be unnecessarily cumbersome and not easily understood by parents.

26. I have considered whether giving APA residents with children already in the School a sibling place rather than an APA place might be considered to be or has the potential to be unfair. Hypothetically, I accept that it is possible for the combination of sibling applicants in the first 60 places to be increased by the APA families thus reducing the number of distance places available. If all the APA places were also taken up by APA residents then the numbers of pupils admitted under criterion 4 would be fewer than were admitted before the APA. For example, if, in the past, half the numbers were admitted were siblings, of the 60 pupils, 30 would be siblings and 30 admitted by distance. If now, or in the future, 30 pupils were admitted as siblings and 10 further siblings from the APA there would be 20 places available for distance. If then all the APA places were taken by APA residents, the overall impact would be to reduce the number of places available by distance.

I have attempted to show this in the table below

	Total places	siblings	APA	Available by distance
Before APA	60	30		30
After APA	90	40 (30 plus 10 from APA)	30	20

I have considered how likely this to happen for admissions in 2013. On the basis of data provided by the LA this is not the case.

Admission Year	SEN	Criterion 1 Looked After	Criterion 2 Medic/Soc	Criterion 3 Sibling	Criterion 4 Distance	Criterion 5 APA
2011	0	0	1	31	32 (28 from first 60 places, 4 from unused APA)	26

* only one sibling place was allocated to a resident of the APA.

27. I consider therefore that the opportunity for parents in the APA to apply for a sibling place does not unduly disadvantage applicants without

siblings.

Distance Priority

28. The evidence is that for admissions in 2012 not all the APA places were allocated to APA residents and became available for applicants by distance. It is undeniable that the distance of the furthest successful applicant reduces year on year. The head teacher produced a useful diagram that illustrated this. It demonstrates that in 2008 offers were made up to 490 metres from the School; this included a number of Wandsworth properties. This distance however reduces year on year and by 2012 has reduced to 352 metres, with the obvious effect of reducing the number of homes from whom successful applicants may come.

29. The distances offered 2008 -2011 were:

- 2012: 304m first 60 places 352m including unused APA places 891m in APA
- 2011: 319m first 60 places 354m including unused APA places 891m in APA
- 2010: 306m
- 2009: 337m
- 2008: 490m

30. The LA supplied the data to show to what the distance would have been for 90 places if the APA did not exist

- 2012: 387m
- 2011: 479m

Between the 2011 and 2012 admission rounds, the distances offered to 'distance applicants' remained almost unchanged; in 2011 this was 353.6m for the first 60 places (352.7m in 2012) and 890.52m for the APA (890.97m in 2012).

31. I consider the reduction in distance offered to be a result of the increase in demand for places, there is no evidence that it is a consequence of the combination of criterion in the admission arrangements.

Conclusion

32. The APA was designed to meet the needs of a section of the LA's families for whom there was no nearby school at a time of increasing demand. The demand is continuing to increase and there is still no other school available. I accept that some residents in the area disagreed and that it is more difficult for residents of other local authorities to make their views known during consultations on local schools. However I consider that the LA was justified in requesting the APA and that it is still required.

33. While it is possible to suggest numbers of applicants for each criterion that would disadvantage others, particularly the combination of APA and siblings, the data do not support such assertions. It clearly did not happen in 2011, and will not happen in 2012; it is reasonable therefore to conclude it is unlikely to happen in 2013.
34. I have not been able to address all the additional concerns raised by the objector in his correspondence as they sit outside my jurisdiction. However, I have considered whether I find these arrangements to be fair as required by the Code. It is easy to understand why parents or indeed groups of parents might think admission arrangements unfair. Some parents, for example, may be allocated their first preference of school and others are offered a school for which they have expressed no preference. Some parents have to travel for an hour to school while others can walk across the road to a school gate. In the objector's case, a few years ago, children living at his address would be likely to gain a place at the School and his children are unlikely to do so.
35. Unfortunately these outcomes are unavoidable and are not contrary to the Code. I have rather considered if the arrangements are clear, justified by circumstance, conform to the Code and enable the LA to meet its statutory duty to provide a school place for its children.
36. I find then that the APA should be continued to provide places for children in that area who have no other accessible school.
37. I accept the LA's argument that there is no unintended consequence of the combination of sibling and APA criteria. I consider the reduction in distance places available for families including those in Wandsworth is due to the rising numbers of pupils in area. I do not uphold the objection.

Determination

38. 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 Merton Council for admissions in September 2013.

Dated: 1 August 2012

Signed:

Schools Adjudicator: Miss Jill Pullen