



DETERMINATION

Case reference: ADA3231

Referrer: A parent

Admission Authority: Thurrock Council

Date of decision: 2 November 2016

Determination

I have considered the admission arrangements for September 2017 determined by Thurrock Council for Warren Primary School, Thurrock in accordance with section 88I (5) of the School Standards and Framework Act 1998 and find that in relation to the reasonableness of the catchment area, the arrangements conform with the requirements relating to admissions. I have also found that 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.

The referral

1. Under section 88H (2) of the School Standards and Framework Act 1998, (the Act), an objection was referred to the adjudicator by a parent, (the objector), about the admission arrangements (the arrangements) for Warren Primary School (the school), a mixed community primary school for 3 to 11 year olds for September 2017 in Thurrock. The date of the objection is 19 May 2016. The School Admissions Code (the Code) requires objections to admission arrangements for 2017 to be made to the Schools Adjudicator by 15 May 2016. As this deadline was missed, the case cannot be treated as an objection. However, as the arrangements have been brought to the attention of the Office of the Schools Adjudicator (OSA), I have decided to use the power conferred on me under section 88I (5) of the Act to consider whether the arrangements conform with the requirements relating to admission arrangements. I am therefore treating the objection as a referral. The referral relates to catchment areas within the local authority.

Jurisdiction

2. The admission authority for the school is Thurrock Council, the local authority (LA). I am satisfied the referral has been properly made in accordance with the Act and it is within my jurisdiction. In addition to the matter in the referral I have used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

3. In considering this matter I have had regard to all relevant legislation including the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the regulations) 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 19 May 2016;
 - b. the school's response to the referral;
 - c. the LA's response to the referral, supporting documents and subsequent correspondence;
 - d. the LA's composite prospectus for parents seeking admission to schools in the area in September 2016 and 2017; and
 - e. a copy of the determined arrangements.

The Referral

5. The referral relates to paragraph 1.14 of the Code which states that *"catchment areas **must** be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school."* The referrer considers the catchment area in which she lives to be unreasonable on a number of grounds;
 - there are four primary schools geographically nearer to her home than her allocated catchment school;
 - the journey to the catchment school is not within safe walking distance whereas the school which is the subject of this determination has a safe walking option;
 - the council has not reviewed the catchment area since the 1980s;
 - the catchment area is at odds with the LA's Sustainable Modes of Transport Strategy; and
 - the catchment area is a contributory factor in the large expenditure by the LA on home-school transport.

Other Matters

6. I have considered the referral and have also considered other aspects of the arrangements which may not comply with the Code, the regulations or the law; these are;
- consultation requirements in line with paragraphs 1.42 to 1.45 of the Code;
 - the annual determination and publication of the arrangements in line with paragraphs 1.46 and 1.47 of the Code;
 - the admission of children whose statement of special educational needs (SEN) or Education, Health and Care (EHC) plan names the school (paragraph 1.6 of the Code); and
 - the deferral of the start date for children in Reception Year who have not reached compulsory school age and part-time schooling for children who have not reached compulsory school age (paragraph 2.16 of the Code).

Background

7. The school is a community primary school for 3 to 11 year olds. It was built in the 1990s as one of four new primary schools to accommodate children from a housing development of 5000 homes. It opened in 1997. The school has 501 pupils on roll and a capacity of 500. It has had a published admission number (PAN) of 60 for admission to reception (YR) for many years and this PAN is retained for admission in September 2017. The school is oversubscribed; for admission in September 2015 there were 84 first preferences.
8. There are four other primary schools in the area, three are academy schools and one is a free school. The school which is the subject of the referral is the only community primary school in the area. One of the other schools, an academy school, is the referrer's catchment school. All five schools have the same over-subscription criteria. In the case of the academy schools, they have continued to use the same criteria employed when they were maintained schools and the free school when it opened adopted the same approach. These criteria can be summarised as follows:
- 1) Looked after and previously looked after children.
 - 2) Exceptional social, medical or educational reasons.
 - 3) Catchment area siblings.
 - 4) Catchment area children.
 - 5) Non-catchment area siblings.

6) Non-catchment area children.

Notes and definitions are provided on siblings and distance.

9. In the last three years the school has admitted up to PAN and the last successful application was within criterion 4 (catchment area children). The applications within this criterion were ranked in terms of straight line distance from school to home and the last successful applicant in the last three years lived 411 metres; 788 metres and 1028 metres from the school (in 2014, 2015 and 2016 respectively). Not all catchment area children applying for a place were successful.
10. The LA does not produce maps of catchment areas but does have a postcode 'look-up' facility on its website to indicate to families the name of their catchment school.

Consideration of Case

11. The referrer explains that her nearest school is the school which is the subject of this determination. However, it is not her address's catchment area school. She goes on to say that the school which is her catchment area school is not within a safe walking distance whereas there are four schools which are nearer to her home and with safe walking options, the nearest being the school which is the subject of this determination. She therefore considers that the catchment area is not reasonable and is non-compliant with paragraph 1.14 of the Code.
12. She explains that her home is separated from all five schools by a major trunk road and that her catchment school requires children to *"negotiate a grade separated roundabout over the trunk road dual carriageway"* whereas the school (that is the school which is subject of this determination) can be accessed safely as there is a suitably located footbridge over the trunk road. For this reason, the referrer again considers that the catchment area is not reasonable and therefore is non-compliant with paragraph 1.14 of the Code.
13. The referrer explains that the catchment area in which she lives was designed in the 1980s. In the 1990s, 5000 homes were built in a local area and four new primary schools were built to accommodate the children from these houses. The referrer lives in a separate residential development constructed in 2002-4. Although the four new schools are all nearer to the referrer's home there has been no change in the catchment areas and she considers this unreasonable.
14. She goes on to explain the Council's statutory duty under the Education and Inspections Act 2006 to promote sustainable travel to and from school and details the LA's Sustainable Modes of Transport Strategy. The referrer states that this policy is at odds with the historical catchment areas and that the current catchments promote *"car culture, adding to congestion and contributing to poor air quality."* She goes on to say that *"the catchment boundaries fail to take advantage of nearer schools where children could walk, in a safe environment, promoting healthier lifestyles"*

and tackling childhood obesity”.

15. The referrer reports that the LA's expenditure on taxis for 254 primary school pupils each year is £659,000 and she considers that the catchment areas contribute to this and are therefore unreasonable.
16. In its first response the LA explained that the referrer is currently going through an independent appeal in support of her application for a reception place in September 2016 and suggested that as this concerns the arrangements for September 2016 this would not be within the jurisdiction of the adjudicator. Further correspondence from the referrer confirmed that the referral concerned the arrangements for September 2017. In any case, the arrangements for 2017 had come to my attention and were accordingly within my jurisdiction.
17. The LA went on to say that there is no council decision to undertake or facilitate a catchment area review in the LA where all the ten secondary schools are own admission authority schools and where the majority of primary schools are academies. It went on to say that three of the schools built to serve the 5000 new houses in the 1990s are now academies and none of these schools has signalled an intention to expand or otherwise amend their catchment area and that the governors of the fourth school, the community school which is the subject of this determination, have not approached the LA with a view to change the current catchment area.
18. The LA goes on to explain that three of the four schools built to accommodate the 1990s development are consistently oversubscribed. The LA also expects that, when the fourth school (a free school) moves into permanent, newly built accommodation, this too will be oversubscribed but that it expected to relieve some of the pressure on the other three schools. The LA provided information that no offers were made to applicants who were out of catchment sibling or out of catchment children for September 2016 and that the allocation to YR at the school was one looked after child, three social and medical exceptional circumstances, 22 catchment siblings and 34 catchment children. Not all catchment children were allocated a place.
19. The LA concluded that should the school's catchment area expand it would add to the pressure on places at the schools and would create unrealistic expectations for some families of securing places.
20. According to a web based distance calculator, the distance from the referrer's house to the school is 1,031 metres and to the allocated catchment school the distance is 1,788 metres. The furthest distance for a successful applicant to the school in September 2016 was 1,028 metres. This means that, even if the catchment area had been expanded to include the referrer's address the application would have been unsuccessful. In reality, an application would be likely to be unsuccessful. This is because the address is out of catchment and the school cannot accommodate all catchment area children, even though, as the crow flies, the referrer's address is nearer than some houses within its catchment.

21. An analysis of the walking routes to the two schools shows that there is a footbridge over the trunk road which provides walking access to the school but that there is no footbridge to the catchment school. Whilst the implementation of the LA's Sustainable Modes of Transport Strategy is not within my jurisdiction, being able to safely walk to school or not is a reasonable argument. The expenditure in home-school transport is likewise out of my jurisdiction.
22. It is easy to see why the school's catchment area seems unreasonable from the perspective of the referrer. That, however, does not necessarily make it unreasonable. Although the referrer's home is nearer to the school it does not form part of the housing development for which the school was established and for which it still caters and therefore it is not unreasonable for the LA to maintain the catchment area for the school, which gives priority to children who live in that housing development.
23. Reviewing catchment areas is not matter for me. However, I note that it might be appropriate for the LA to consider catchment area boundaries during its process of planning for future school places.
24. Whilst distance from home to school and safe walking routes are important factors, the key factor in this determination is that the catchment area of the school was set up to accommodate the children from the new housing and that this has remained the same since the houses were built in the 1990s. It has clearly been successful in this respect as the PAN is consistently reached from within this area. Should the LA expand the catchment area to include addresses in the referrer's area this would inevitably mean that more children, within the housing development for which the school was built, would not gain places.
25. I accept that the catchment area is a well-established part of the admission process for parents within the area and a methodology in which the majority of local, first preferences within the catchment area are successful. It is clear that all the places in the school are required to fulfil this need. I conclude that this historical catchment area is not unreasonable as a determinant of school places and is not contrary to paragraph 1.14 of the Code. I therefore do not agree with the referrer in this matter.

Other Matters

26. There are four areas of the arrangements which do not conform with the Code, the law and the regulations:
 - paragraph 1.42 to 1.45 of the Code set out the timeframe and process for consultation on admission arrangements. Initial correspondence from the LA stated that the arrangements have not been subject to consultation since the publication of either the 2012 or 2014 Code and that, as there had been no changes proposed, no consultation was necessary. Later correspondence from the LA produced a document to the Children's Services Overview and Scrutiny Committee dated 21 January 2008 which outlines a consultation process for school

admission arrangements for September 2009. Regulation 15 of the regulations states that “...an admission authority is not required to consult on their proposed admission arrangements for the year 2013-14 and any subsequent admission year where they consulted on their proposed admission arrangements in accordance with section 88C (2) in any of the six preceding determination years and the proposed arrangements are the same as those determined following the last such consultation”. This means that following the consultation on the 2009 arrangements, and if no amendments were proposed, the next consultation was required for the 2016 arrangements which should have been undertaken for a minimum of 8 weeks and must have been completed by 1 March 2015. For consultation on the 2017 arrangements the timeframe has been changed; consultation must now last for a minimum of six weeks and must have taken place between 1 October 2015 and 31 January 2016. The Director of Children’s Services has confirmed that no consultation process has been undertaken in line with the Code and has indicated that a full consultation on admission arrangements for community schools in Thurrock will take place imminently for admissions in September 2018. This process is required to take place between October 1 2016 and 31 January 2017 for a minimum of six weeks.

- paragraph 1.46 and 1.47 of the Code state that “all admission authorities **must** determine (i.e. formally agree) admission arrangements every year... for entry in September 2016 by 15 April 2015 and for all subsequent year by 28 February in the determination year”. When confirmation and evidence of determination was requested from the LA the response was “admission arrangements for community and voluntary controlled schools in Thurrock are delegated to the Director of Children’s Services (DCS) under the council’s scheme of delegation”. In response to further, repeated requests for other evidence of the determination process the LA’s response was “the process is that, where no changes to the arrangements have been proposed and where consultation is not required by the School Admission Code 2014, the DCS considers the document that contains the arrangements, as updated by the admissions team, and either agrees or raises questions on them, as appropriate. The final version of the document is then posted on the council’s website. There is no other document relating to the process. There is, therefore, no other formal record”. I was concerned that there was no apparent audit trail or other evidence such as agenda items or key decisions document of this formal agreement made by the DCS. The DCS has accepted that the arrangements have not been determined annually as required and has confirmed that the arrangements for September 2017 were finally determined on October 19 2016. He has confirmed that arrangements will be determined annually in the future in line with the Code.
- Paragraph 1.6 of the Code states that “the admission authority for the school **must** set out in their arrangements the criteria against which places will be allocated at the school where there are more applications than places and the order in which the criteria will be applied. All

*children whose statement of special educational needs (SEN) or Education, Health and Care (EHC) plan names the school **must** be admitted.” There is no mention of children with statements of SEN or EHC plans in the admission arrangements for September 2017. In the “information to parents” section of the admissions brochure for September 2017 a note reads “Special Educational Needs. Where a child has a statement of special educational needs or an education health care plan a school place will be offered under different regulations.” This does not conform with the Code and requires amendment.*

- Paragraph 2.16 of the Code explains that a child’s parents can defer the date their child is admitted to the school until later in the school year but not beyond the point at which they reach compulsory school age and that children may attend part time until later in the school year but not beyond the point at which they reach compulsory school age. There is no mention of this provision in the arrangements for September 2017 and in the brochure for admission in September 2017 the LA states that *“if you feel that there are exceptional circumstances, you may request that your child’s admission be deferred until later in the Reception year. This is subject to agreement of the school. You can also request that your child attends part-time until he/she reaches compulsory school age”*. The Code makes it clear that deferred admission and part-time arrangements are an entitlement for parents of children who have not reached compulsory school age and not at the discretion of the admission authority or the school. This element of the arrangements does not therefore conform with the Code and requires amendment.

Summary of Findings

27. The referrer wishes the LA to review the catchment area arrangements because she believes them to be unreasonable and that they do not conform with paragraph 1.14 of the Code. She lives nearer to a school which is not her designated catchment school and the journey to the nearer school would be quicker and safer for the children. I understand and sympathise with the referrer’s views and, if the school was able to accept children from another area I would be minded to say that it would be reasonable for the LA to review and revise the arrangements. However, the school was built to accommodate children from within a particular housing development and this remains the situation. The school is full and oversubscribed with children living within the historical catchment area. A change to the catchment area would simply transfer the disappointment of those families living outside the catchment area who are currently not offered a place at the school to more families who live within the catchment area and historically have high expectations of a place at the school. I am therefore of the view that the catchment area is reasonable and the arrangements in this respect conform with the Code.
28. I have identified four areas of the arrangements which are not compliant with the Code; the consultation process, the determination and publication process, the admission of children with SEN or EHC plans and the deferred entry and part time attendance of reception children. These

issues require urgent amendment and action.

Determination

29. I have considered the admission arrangements for September 2017 determined by Thurrock Council for Warren Primary School, Thurrock in accordance with section 88I (5) of the School Standards and Framework Act 1998 and find that in relation to the reasonableness of the catchment area, the arrangements conform with the requirements relating to admissions. I have also found that there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

30. 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.

Dated: 2 November 2016

Signed:

Schools Adjudicator: Ann Talboys