



## **DETERMINATION**

**Case reference:** ADA2870, ADA2871, ADA2883 and ADA2896

**Objectors:** Four parents

**Admission Authority:** The Academy Trust for Esher Church of England High School

**Date of decision:** 24 July 2015

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objections to the admission arrangements for September 2016 determined by the academy trust for Esher Church of England High School, Surrey.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), four objections have been referred to the adjudicator by parents, the objectors, about the admission arrangements (the arrangements) for September 2016 for Esher Church of England High School (the school), an academy school for children aged 11 to 16.

### **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 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. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and they are 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 objectors' forms of objection dated 18, 19, 30 May and 17 June 2015 together with subsequent comments from the objectors;

- b. the school's response to the objections and further information provided in response to my enquiries;
- c. Surrey County Council's, the local authority (the LA) composite prospectus for parents seeking admission to schools in the area in September 2015, their comments on the objections and information provided in response to my enquiries;
- d. comments from the Diocese of Guildford on the objections;
- e. maps of the area identifying relevant schools and catchment areas;
- f. confirmation of when consultation on the arrangements last took place;
- g. copies of the minutes of the meeting at which the academy trust of the school determined the arrangements; and
- h. a copy of the determined arrangements.

### **The Objection**

5. The objections concern the introduction of a system of feeder schools into the oversubscription criteria for September 2016 alongside the existing catchment area. The objectors believe this is unfair and contravenes paragraph 14 of the Code. The objectors also questioned whether the arrangements complied with paragraphs 1.15 of the Code concerning the selection of feeder schools and 2.20 concerning the co-ordination of admission arrangements.
6. The objectors identify two groups of children affected by the introduction of feeder schools into the oversubscription criteria. The first are those children who live close to the school in the catchment area, but do not attend one of the feeder schools. The second group are children who do not live in the catchment area, but do attend a feeder school. The objectors say these groups of children were overlooked in the development of the oversubscription criteria and the arrangements are unfair to them.
7. The objectors also consider that the introduction of this change should have been delayed to allow parents to plan accordingly and move their children to primary schools which are feeder schools for their preferred secondary school. It was also pointed out by the objectors that the change coincided with the admission of a bulge year group in the area which led to some children not being able to find places in their local primary school. These children were then placed in other schools which have now become feeder schools to a secondary school which is not their catchment school.
8. The objectors suggested how the arrangements could be changed to address the issues they identify including changes to the catchment area.

## Background

9. The school is one of five secondary schools in the district of Elmbridge. The catchment area extends from East and West Molesey in the north to Cobham in the south, a distance of about ten kilometres. For most of its length the catchment area is between one and two kilometres wide, but is about five kilometres wide where it has been extended to include Claygate to the east of Esher itself. The school is situated about four kilometres from the northern extent of the catchment and close to its western boundary.
10. This catchment area has been in operation since 2011 with the Claygate area added in 2015. Claygate is also in the catchment area for a neighbouring secondary school, Hinchley Wood School. East and West Molesey are in the catchment area for another neighbouring school, Rydens Enterprise School. Cobham Free School was established within the catchment area in 2012 and this gives priority in its oversubscription criteria to children living in a specific postcode which overlaps with the south of the catchment area.
11. The schools serving the two catchment areas adjacent to the catchment area of Esher High School are between two and three kilometres away from the school measured in a straight line, Cobham Free School is less than six kilometres away while the fifth school, Heathside School, is between six and seven kilometres to the west.
12. The school was judged by Ofsted in 2013 to be good. There have been more children living in the catchment area than there are places at the school for some years and it is oversubscribed. The published admission number (PAN) is 240; this was raised from 210 in 2015. For September 2015 there were 235 first preferences for the school and 282 second preferences.
13. In previous years priority for places was given in the following order:
  1. Looked after and previously looked after children.
  2. Exceptional social and medical needs.
  3. Siblings of children at the school who live at the same address.
  4. Children living in the catchment area.
  5. Other children.

Priority within each category was given to the children living closest to the school. The school was concerned that children living at the extreme north and south of the catchment area who attended primary schools which work together with the school in the 'Esher, Cobham, East and West Molesey (ECM) Cluster' were not being allocated places. The school commissioned the LA to model the impact of introducing oversubscription criteria which gave priority to children attending schools in the cluster. After considering the report from the LA the school consulted on changes to their admission arrangements. This consultation showed a high level of support for the changes and the school determined the new arrangements on 24 March 2015.

14. The new arrangements for 2016 split the former criteria 4 and 5 into two parts and can be summarised as:

1. Looked after and previously looked after children.
2. Exceptional social and medical needs.
3. Siblings of children at the school who live at the same address.
4. Children attending seven named primary schools who live in the catchment area.
5. Other children living in the catchment area.
6. Children at one of the named primary schools who do not live in the catchment area.
7. Other children.

Children living closest to the school continue to be given priority in each category and the final tie-breaker remains a ballot.

15. The schools to the immediate east and west of the school, Hinchley Wood School and Rydens Enterprise School both use oversubscription criteria with a combination of catchment area and feeder schools, while Cobham Free School to the south gives priority to children living in its neighbourhood based on wards and postcode before other children who are given priority based on home to school distance.

16. Against a background of population growth, the LA has been able to meet the demand for places from the catchment area by using unfilled places in neighbouring schools. Across the wider district of Elmbridge the LA says it currently has sufficient places and has plans to expand existing schools to meet known population growth. The LA is also in discussion with the district council and the Education Funding Agency (EFA) about a new secondary free school for the area.

### **Consideration of Factors**

17. The objectors have cited Paragraph 14 of the Code which says "*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.*" They have also referred to paragraph 1.15 which says "*The selection of a feeder school or schools as an oversubscription criterion must be transparent and made on reasonable grounds.*" I have also noted paragraph 1.14 of the Code which says "*Catchment areas must be designed so that they are reasonable and clearly defined*", and given comments on the timing of the change from objectors I have noted the requirements for consultation on changes to admission arrangements as set out in paragraphs 1.42 to 1.45 of the Code.

18. One of the paragraphs in the Code referred to by one objector is paragraph 2.20. This paragraph concerns the LA's scheme of co-ordination of applications and offers, not the determined arrangements of an admissions authority for a school, it is therefore not within my jurisdiction and I make no further comment on this matter.

19. I begin by considering the timing of and consultation on the introduction of these changes, the selection of feeder schools and the reasonableness and clarity of the catchment area before turning to the question of overall fairness.

#### The introduction of the new oversubscription criteria

20. One objector said "*I believe that the sudden change of admissions criteria is unfair*". Paragraph 1.42 of the Code says "*When changes are proposed to admission arrangements, all admission authorities **must** consult on their admission arrangements (including any supplementary information form) that will apply for admission applications the following school year*". The next paragraph says when consultation must take place "*For admission arrangements determined in 2015 for entry in September 2016, consultation **must** be for a minimum of 8 weeks and **must** be completed by 1 March 2015.*" The Code continues to say in paragraph 1.44 who must be consulted which includes "*parents of children between the ages of two and eighteen*".
21. The school has provided me with evidence that consultation took place between 28 November 2014 and 2 February 2015. I specifically asked how the school consulted with parents and they responded that as well as contacting parents through all the primary schools in the area they promoted the consultation through the local press. Facebook notifications were posted on a number of pages including 'East and West Molesey and Ditton Mums' and 'Claygate Mums'. Of the 211 responses received to the consultation 174 were from parents of children who may attend the school in the future, indicating to me that consultation with parents of children aged between two and eighteen did take place as required by the Code. I have also seen a press release issued by the school within three days of the arrangements being determined which in my view shows that the school took steps to notify potential future parents of the change as quickly as possible.
22. I am satisfied that the statutory requirements to consult parents have been met. The Code does not allow admission authorities to set their arrangements any earlier than this for future years so the school could not have set its arrangements for 2016 any earlier, nor could it set arrangements for 2017 at this time as admission arrangements have to be determined annually in accordance with paragraph 1.46 of the Code. The school cannot be required to give more notice of proposed changes than that specified by law and I do not uphold the objection on the point that the school should have allowed further notice of the change or deferred the changes.

#### Selection of feeder schools

23. The school has explained that the seven named feeder schools have worked with the school since 2004. This ECM cluster of schools collaborates on projects for students and staff designed to support students. All of these feeder schools are located within the school's

catchment area and 71 per cent of the 2015 intake will have attended one of these schools. I have seen evidence that the inclusion of a Catholic primary school as a feeder school was carefully considered and discussed with both the Catholic and Anglican dioceses. None of the feeder schools are feeder schools for other secondary schools in the area. There are two other primary schools in the catchment area with Year 6 pupils, one is a Catholic school which was considered as a feeder school, but was rejected after discussion with the Diocese and Claygate Primary School which is in the shared catchment with Hinchley Wood School and is a named feeder for that school. I am satisfied that the selection of the feeder schools was “*transparent and made on reasonable grounds*” as required by paragraph 1.15 of the Code and I do not uphold the objection on this point.

### Catchment area

24. The catchment area has been in place since 2011 and an area around Claygate was added in 2015 when the PAN was raised to 240 from 210. As noted above, this area overlaps the catchment area for Hinchley Wood School and the catchment for Rydens Enterprise School overlaps the school’s catchment in the north around East and West Molesey. The school explained that it was originally established in the place of three schools serving Esher, Cobham and East and West Molesey and it is committed to serving the area with which it has historic links.
25. Examining the catchment area maps shows the catchment encompasses the areas named above, Esher, Cobham, East and West Molesey. For most of its route the boundary follows the Thames, major roads or passes through common land or countryside. The arrangements do point out that a child may not live in the catchment area even though it is their nearest school. The catchment areas for this and the adjacent schools appear to me to have been designed so that children who live farthest from all the schools in Elmbridge have a relatively high degree of priority for a place at one of them and so have a reasonable chance of securing a place at a school which is not too far from their home.
26. In considering the reasonableness of the catchment area I cannot ignore the fact that there are, and according to the LA, have been for “*a number of years*”, more children living in the catchment area than there are places available. While living in a catchment area is not a guarantee that a child will be allocated a place at a school there will be an expectation in the community that most children living in the catchment area will normally be successful in securing a place if they want one.
27. Not all children living in the catchment area apply for a place at the school as a first preference, for example in 2015 there were 235 first preferences for the school, not all of which would have come from the population of 395 in Year 6 known to the LA. There were therefore at

least 160 families living in the catchment for which the school was not their first preference. Not all of the 160 or more would have been allocated their first preference and may have been among the 486 lower preference applications for the school. Through the LA's scheme of co-ordination some of these children may have been allocated places ahead of first preference applications with lower priority under the oversubscription criteria.

28. In the modelling the LA undertook for the school when it was considering proposing changes to its oversubscription criteria there is evidence that after allocations have been made many places are offered from the waiting list at a later date. This could be through events such as families accepting places in the private sector or moving away from the area. The data quoted in the study show that in 2012, 2013 and 2014 at the time places were first allocated between 34 and 79 catchment area children were not initially offered places. However, after offers had been made from the waiting list, only in 2013 were there any catchment area children who had sought a place at the school who did not secure a place there or at a higher preference school.
29. In considering the mismatch between the population of the catchment area and the number of places available at the school I have noted that parts of the catchment, Claygate and East and West Molesey are also in the catchment of, and therefore have priority for, other schools while children living in the KT11 postcode in the south of the catchment have priority for places at Cobham Free School. Plotting the shared areas on a map shows that about half of the housing in the catchment area is in the catchment for two schools or in the postcode area that has priority for the Cobham Free School. So while there may be more children living in the catchment area than there are places I do not consider this detracts from the reasonableness of the catchment area because many of them have a degree of priority for one of three other schools.
30. A suggestion from the objectors was that the catchment area should be increased further to include an area separated from the current catchment area by Littleworth Common. While this may be of benefit to some families, it is not consistent with the way the catchment boundary is drawn elsewhere and would add to the number of children inside the catchment.
31. Taking all of these factors into consideration, it is my view that the catchment area is "*reasonable and well defined*" as required by the Code.

### Fairness

32. I now consider the part of the objection that says the arrangements are not fair as required by paragraph 14 of the Code which I have quoted above.

33. The change introduced by the school for 2016 essentially alters the way in which children who live inside the catchment area and those who live outside it are given priority for places. Previously, children who lived inside the catchment area were prioritised on the basis of distance from home to school. Priority is now given to catchment area children who attend one of the feeder schools followed by other catchment area children who still take priority over children who do not live within the catchment area.
34. Children who live outside the catchment area have always had lower priority for places than those living inside it and this has not changed. If there are any places available for children who live outside the area, the new arrangements give such children attending feeder schools priority over others.
35. The objectors consider the new arrangements are unfair to two groups of children when considered in the context of the existing oversubscription criteria at neighbouring schools and that the school did not give sufficient consideration to these groups of children when determining the arrangements. The two groups are:
- i) children who live in the catchment area, but do not attend a feeder school; and
  - ii) children who attend a feeder school, but do not live in the catchment area.
36. The objectors have said that some children would have been placed in the position of not being in a feeder school for their catchment secondary school because the 2009 primary school intake was a bulge year and places were not available at the local primary school preferred by their parents. I have considered this point and it seems to me that other children will be in this position because in 2009 their parents wanted them to be at a particular primary school, and could not have known the consequences of that decision for secondary admissions seven years later, while others will have moved into the area in subsequent years and had limited options about where primary school places were available. I do not consider children placed in a school due to the bulge in 2009 to be a special case because other children will be in the same situation for equally justifiable reasons.
37. I asked the school and the LA what consideration was given in the prior modelling undertaken by the LA to identify children who would have previously been allocated places at the school and the secondary school options that would be available to them. The local authority responded that it *“did not specifically do an analysis of where children displaced by the proposed arrangements might find school places, but it recognised that with the increase in the PAN at the school, the number would be low after waiting list offers had been made.”* The LA continued to say that it had reviewed the background data to the analysis and it confirmed that *“using data for the 2012, 2013 and 2014 intakes and after waiting list offers had been made, it would appear that*



*the number of pupils who might have been displaced from receiving an offer for Esher High had the new arrangements been applied would have been negligible (less than three in 2013 and 2014)."*

38. The school said it "*did consider the impact that the changes would have on children who would have previously got places*" and it debated whether or not to give all children attending feeder schools priority over catchment area children who did not attend a feeder school. The school decided to stay as close to the previous arrangements as possible. The minutes of governors' meetings at which the arrangements were discussed and approved are not verbatim accounts of the discussion. However, I have been supplied with a report on the consultation. This report includes comments from consultees which were the same as the issues raised by the objectors. I am satisfied that the school did consider the position of children in the two groups identified by the objectors.
  
39. I now turn to the question of fairness to children who live in the catchment area, both those who attend a feeder school and those who do not. When a school is oversubscribed there must be a set of criteria to decide which children will have priority to be offered places. Previously when the school was oversubscribed from within its catchment, the children who were unsuccessful in securing places were those living farthest from the school in the north and south of the catchment. Under the 2016 arrangements, some of these children are more likely to be offered a place because they attend a feeder school. This means that children who live nearer to the school, but do not attend a feeder school are less likely to be offered places.
  
40. The objectors have said that children living in the catchment area near the school may have to travel some distance to an alternative school if they are not offered a place. The same could be true for those catchment children who live farthest from the school and would not be allocated places if just distance was used to discriminate between children within the catchment area.
  
41. I have used the Department for Education's school database called Edubase, to identify how many schools there are within three miles (4.83km) of each of the four parts of the catchment area. This shows that children living near the school in Esher and Claygate have more alternative schools available than those living farthest from the school in Cobham and so are potentially less disadvantaged if they do not secure a place at the school.

Part of catchment	Number of schools within three miles
West Molesey	9 (including 7 north of the Thames)
Esher	5
Claygate	6
Cobham	2

42. A key part of the argument made by the objectors is that the admission arrangements for other schools also use catchment areas to prioritise the allocation of places so these children would have low priority for places at other schools. The LA has said it is able to provide sufficient school places for the residents of Elmbridge in Elmbridge schools so a place should be available for all children at one of the schools through one of the oversubscription criteria.
43. Some children will have to travel farther than others and indeed will need to travel for longer distances than that to their catchment area school. This has been the case for some years for those at the extremes of the catchment area, I see it as no less fair for other children who may live elsewhere in the catchment area to make similar journeys in future.
44. Finally I have considered the position of the children who live outside of the catchment area, and attend one of the feeder schools. The difficulty these families have is if their catchment area school also gives priority to children within catchment who attend its feeder schools. This leads to concern that they would have low priority for places at both this school and their catchment area school. This situation was raised in the consultation responses considered by the governors before they determined the arrangements and consideration was given to exchanging criteria 5 and 6 in the new arrangements. This option would benefit all children in this situation, not just those living in roads included in the change to the catchment area suggested by one of the objectors.
45. There is no requirement for one school to alter its admission arrangements to compensate for changes in a neighbouring school's arrangements. These children have always had lower priority for places than those living inside the catchment area. These new arrangements give these children priority over others if there are any places left after catchment area children have been placed. They are therefore in a better position than they would have been if the arrangements had not changed, although this may be a benefit in theory rather than practice.

46. It is my conclusion that in this case it is no less fair for priority for places to be based on attendance at a feeder school than just on the distance a child lives from the school within the catchment area. Children who may in future not be allocated places under these arrangements have more alternative schools within a reasonable distance of their homes than some of those who may have failed to be allocated places in the past. The LA is confident that places will be available at one of the other schools serving the district, all of which are within a reasonable distance from homes in the catchment area. I do not therefore uphold this part of the objection.

## **Conclusion**

47. I am satisfied that the school's oversubscription criteria are permitted by the Code and that the school consulted on and determined the arrangements as prescribed by the Code.

48. While individual criteria may be permitted by the Code, the overall effect of them in the context of the school may be unfair. When a school is oversubscribed it is a fact that some children will not be offered places. I have considered the implications for children whose priority for places has been reduced by the new criteria. In my view these children would be no more disadvantaged by not being allocated a place than those who would not have done so under the former criteria. I do not find this unfair.

49. I have also considered whether a school should compensate groups who may have had their priority for places at other schools reduced by changes to other schools' oversubscription criteria. I can find no requirement in the Code for them to do so.

50. For the reasons set out above I do not uphold the objections.

## **Determination**

51. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objections to the admission arrangements for September 2016 determined by the academy trust for Esher Church of England High School, Surrey.

Dated: 24 July 2015

Signed:

Schools Adjudicator: Mr Phil Whiffing