



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA2940

Referrer: A member of the public

Admission Authority: The governing body of Pewley Down Church of England (Aided) Infant School, Guildford

Date of decision: 22 September 2015

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 governing body of Pewley Down Church of England (Aided) Infant School, Surrey for admissions in September 2016.

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 Pewley Down Church of England Aided Infant School (the school), a voluntary aided Church of England school for pupils aged four to seven years.
2. The objection has been made by a member of the public who wishes to remain anonymous. The party has met the condition of paragraph 24 of the School Admissions (Admission Arrangements and Co-ordination of Admissions Arrangements) (England) Regulations 2012 by providing their name and address to the Office of the Schools Adjudicator.
3. The objection is that oversubscription criteria 3 and 5 of the arrangements which give priority for siblings do not comply with the requirements of paragraph 1.8 of the School Admissions Code (the Code).

Jurisdiction

4. These arrangements were determined under section 88C of the Act by the governing body, which is the admission authority for the school. The objection to these determined arrangements was submitted on 29 June 2015. 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

5. In considering this matter I have had regard to all relevant legislation and the Code.
6. The documents I have considered in reaching my decision include:
 - the objection form dated 29 June 2015, and the objector's further comments of 21 and 23 July 2015;
 - the school's response dated 20 July 2015, with supporting documents; and further comments dated 22 July 2015;
 - comments from the LA dated 14 July 2015;
 - documents relating to the consultation held between 19 December 2014 and 1 March 2015;
 - a response from the Diocese of Guildford (the diocese), which is the faith body for the school, dated 16 July 2015;
 - minutes of the meeting of the governing body held on 19 March 2015 at which the arrangements for admission to the school in September 2016 were determined;
 - a copy of the determined arrangements for 2016; and
 - the LA's composite prospectus for parents seeking admission to primary schools in the area in September 2015.

The objection

7. In the objector's opinion oversubscription criteria 3 and 5, by giving different levels of priority for the admission of siblings in different circumstances, are unfair to families who have to move house either because they are private rented tenants or because the family needs to accommodate a growing family. The arrangements are said to restrict families' scope to move to the small area where Pewley Down is the closest school. The objector also says that the arrangements do not include an effective, clear and fair tie-breaker between two applications for sibling priority. The arrangements are said to contravene paragraph 1.8 of the Code which says, *"Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child. Admission*

*arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated."*

Background

8. The school was previously a foundation school and became a voluntary aided school on 1 July 2011. It is one of two schools that form the Holy Trinity Pewley Down federation. An executive head teacher leads both schools and the governing body is the admissions authority for two schools, the other being Holy Trinity Church of England (Aided) Junior School.

9. There are approximately 180 pupils on the roll and the school has a published admission number (PAN) of 60. In 2014 the school was undersubscribed and some of the children who were admitted lived closer to other schools. However, in 2015 the school was oversubscribed with 211 applications of which 78 were first preference applications. As there were no applications from looked after or previously looked after children (the first priority group), the majority of places (57) were allocated to applicants seeking priority under oversubscription criteria 2 and 3. In the 2015 arrangements there were just six oversubscription criteria.

1. Looked After Children in the care of the local authority and previously Looked After Children.

2. Children who have a sibling who is an existing pupil of one of the schools of the Holy Trinity and Pewley Down (HTPD) federation and who will be attending one of the schools of the HTPD federation at the time of application.

3. Children for whom Pewley Down is the school closest to their permanent home that admits pupils of the appropriate age range.

4. Siblings in the same school year where Pewley Down is the two-form entry school closest to their permanent home and the need for education in separate classes is demonstrated.

5. Children whose permanent home lies within the designated catchment area – Holy Trinity Ward 2002.

6. Other applicants.

10. The effect of oversubscription criterion 2 was that younger siblings of a child at the school or the linked junior school would benefit from a high level of priority for their application. The school was concerned that in future it would receive so many applicants from siblings (including where families had moved) that it would not be able to offer places to children for whom the school was the closest school.

11. Against this background and wishing to be fair both to siblings of existing pupils and to eldest and only children living close to the school, the school consulted on new arrangements. In the light of feedback from the consultation the proposed sibling criteria were adjusted to take account of the

views expressed. The arrangements for 2016 were determined as follows. (Where a word is underlined the school has subsequently provided a definition or explanation).

1. Looked After and Previously Looked After Children.
 2. Children of a member of staff recruited to fill a difficult to recruit position.
 3. Children who have a sibling attending one of the schools of the HTPD Federation at the time of application and either:-
 - a. Pewley Down is the closest school; or
 - b. the sibling attends or previously attended Pewley Down, and the child's permanent home is at the same or an equivalent address.
 4. Children for whom Pewley Down is the closest school.
 5. Children who do not fall within category 3 with a sibling who, at the time of application, is attending:-
 - a. Pewley Down; or
 - b. Holy Trinity School, where the sibling previously attended Pewley Down.
 6. Children with a sibling in the same school year who is also applying for admission to Pewley Down, where it is the closest multiple form entry school and the need for education in separate classes is demonstrated.
 7. Children of a member of staff who has been employed by the HTPD Federation for two or more years at the time at which the application for admission to the school is made.
 8. Children who do not fall within category 3 or 5 who have a sibling attending Holy Trinity School at the time of application.
 9. Children whose permanent home lies within the designated catchment area.
 10. Children whose parent(s) request admission on the grounds of active membership of Holy Trinity or St Mary's Churches, Guildford.
 11. Children whose parent(s) request admission on the grounds of their Christian faith, but only if Pewley Down is the closest Church of England infant school and active membership of their church is demonstrated.
 12. Other applicants."
12. The new arrangements thus mean that siblings from families who move but to an address that is no further from the school than their previous

address at an equivalent distance from the school , retain a higher level of sibling priority than other families who have moved further away from the school.

13. The criteria relating to the children of staff have been the subject of a separate objection to the adjudicator and that is the subject of determination ADA2938.

Consideration of factors

14. The first point made by the objector is that families who are in private rented accommodation are more likely to be disadvantaged by the change to the arrangements as they are characterised by a higher mobility than owner occupiers and are more likely to have to move even if they did not wish to do so. The objector also argues that the oversubscription criteria disadvantage any family that wishes to move to a larger house to accommodate a growing family. In effect the objector believes that the arrangements restrict the housing options for these families, to the limits of the small area where the school is the closest infant school; and this does not take account of the realities of the housing market.

15. It is the view of the objector that the new sibling criteria, even though they were modified following consultation, are still unfair to families who have moved further away from the school. If distance from the school is the main approach used to differentiate siblings then the “equivalent distance” definition should not be allowed and the school should not give a higher level of priority to families that do not move house than to families that move. The objector notes that where families move further away, siblings may have to attend different schools, which can be a difficult situation for families to manage; or an older sibling may have to move from the school to another school so that the family can keep siblings together. The objector feels there is no reason to separate siblings in different schools when a family is within commuting distance of the school. The objector also observes in some years children were admitted from a significant distance. Assuming the family does not move, any younger siblings in such cases will benefit from the high level of priority in criterion 3b. However, a younger sibling in a family which moves further from the school than their previous address may have a lower priority under criterion 5 even if they still live closer to the school.

16. In a further point the objector points out that an extra class of children was admitted to Holy Trinity in one year and these children may well have younger siblings. The objector thinks that to cater for these children the school could introduce a separate and much lower priority for siblings of children that attend only Holy Trinity but who have not attended the school. There is no need to affect the siblings of children who have attended the school by creating oversubscription criterion 5.

17. As required by the Code, the school consulted widely on the proposals before changing the sibling criteria and a detailed report to the governing body notes the concerns of those who objected in writing and those who attended the consultation evening. The school felt it was important to take account of

the situation of families in rented accommodation who might have to move from a particular address to other rented accommodation that was equally close to the school, so the term “...at the same or an equivalent address.” was introduced.

18. The school decided it was also important to consider the situation of those families admitted in September 2014 when the school was undersubscribed, as in that school year some children were admitted even though the school was not their closest school. The same level of sibling priority is given to the children of these families, as to the group of children for whom the school is the closest school, provided the family has not moved from the address from which the sibling was originally admitted. The governing body acknowledges the strong arguments both for children to go to their closest school and the desire for siblings to stay together. Its concern is that it may not always be able to accommodate all the children who will fall into these two groups. In its response the school says, “*Whilst we understand that (the objector) is concerned as regards the new sibling criteria (in particular ...criterion 3), we consider that the sibling criteria for Pewley Down are clear, fair, transparent and lawful and followed a detailed and balanced consideration of the needs of all the families in our community.*”

19. The school says that it has been able to offer places to all siblings for admission in September 2015 and anticipates that in most years, all children for whom the school is their closest infant school will also be offered a place. The arrangements afford a lower priority for siblings of children who live closer to another infant school than to the school and the school feels that the majority of parents understand that the intention is to protect “*closest school applicants*”.

20. There are four oversubscription criteria in the arrangements that give varying levels of priority to siblings and these are detailed above. The first is criterion 3 which gives priority to children with a sibling at one of the schools of the federation and for whom the school is the closest or where the child’s permanent home is at the same or an equivalent address as a younger sibling who was admitted in a year when the school was undersubscribed. Criterion 4 then gives priority to children for whom the school is the closest. Criterion 5 affords priority to children with siblings who would not gain priority in criterion 3 but where a sibling previously attended the school. Criterion 6 provides for children with a sibling in the same school year group where the parents wish the two children to be educated in separate classes and so need to secure a place in a school with at least two forms of entry such as Pewley Down. Criterion 8 takes account of a point which the objector refers to above, in that siblings of children who have only attended Holy Trinity and have not attended the school are afforded a much lower priority.

21. Oversubscription criteria exist to cater for situations where more children would like to attend a school than there are places available. Inevitably in these situations some applicants will not gain places. There is clear evidence that all the requirements of the Code have been met with regard to sufficiency of the consultation process and that the governing body gave serious consideration to the feedback it received and that it has tried

hard to find a balanced and fair solution after a careful analysis of the particular circumstances of families within the community it serves. The school's arrangements – while not the simplest – are objective and clear and I consider that they are fair.

22. The second part of the objection relates to the tie-breaker and the objector claims that the arrangements do not include an effective, clear and fair tie-breaker between two applications. The objector's argument rests on two points. First, when the school reaches and exceeds its PAN within any oversubscription category it uses distance to differentiate between applicants. Second, as discussed above, the school's arrangements mean that some siblings of pupils at the school will have a lower priority than other siblings even if the former live further from the school. This argument is I consider based on a misunderstanding of the function of the tie-breaker and the requirements of the Code. The Code makes clear in paragraphs 15d, 1.7 and 2.7 that admission authorities **must** rank applications in order against their published oversubscription criteria and allocate places accordingly. It is likely that a school will reach and exceed its PAN within an oversubscription category rather than on the cusp between one and another. It will, therefore, need to be able to differentiate between applications within that category. It is common for admission authorities to use distance for this purpose and random allocation in order to cater for a situation where two applicants who tie for the final place live equidistant from the school. This is what Pewley Downs does. Other admission authorities use different approaches but, as paragraph 1.10 makes clear, it is for admission authorities to determine their own arrangements in line with their circumstances and the requirements of the Code.

23. In response the school says, *"We do not agree that there is not a fair tie breaker for any of the school's admission categories - ...we clearly set out how we will determine to whom a place is allocated where there is one place left to be awarded and there are two families that live an equal distance away from the school in respect of that place, in whatever category the cut off falls. This provision applies to all of oversubscription criteria."*

24. While the objector's view is that it is unfair that the point of distance used in different oversubscription criteria is not the same, the distance point will vary depending on which oversubscription criterion is being applied. One example might be that of a child who is looked after and who may live some distance from the school but who would still retain the highest priority for admission. There is nothing unfair or, indeed, unusual about the school's arrangements.

25. Parents must consider each set of arrangements in the school in the locality where they live and make a decision about which schools they wish to express preferences for. Having obtained a place for one child there can be no guarantee that a younger sibling will gain admission, particularly if a school is oversubscribed or if a family has moved house in the meantime. It is quite possible that the arrangements for one particular school will give a higher or lower priority for admission for their child than another local school. Were the

school to afford sibling priority to the children of every family, even to those who had moved out of its immediate area and closer to other schools, for whatever reason, it is quite possible that in some years places would be filled with children who live some distance away from the school and this would be to the detriment of other children who lived close to the school and who might not gain admission; or to the detriment of first born children who cannot claim any level of sibling priority.

26. In my view this would not be fair and in the light of these factors, I have concluded that the arrangements are consistent with the requirements of the Code and I am not persuaded by the arguments of the objector and for this reason the objection is not upheld.

Conclusion

27. The objector asserts that oversubscription criteria 3 and 5 are unfair and that there is no tie-breaker. The school which finds itself under significant pressure with only 60 places and 78 first preferences has consulted widely and has given serious consideration to the views of respondents before determining arrangements which in its opinion are clear, fair and objective. I agree with this view and am not persuaded that the school must continue to give the same level of priority to the children of families that move away from the school. The school has provided a clear tie-breaker as required. As the arrangements meet the requirements set out in paragraph 1.8 of the Code I do not uphold the objection.

Determination

28. 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 governing body of Pewley Down C of E (Aided) Infant School, Surrey for admissions in September 2016.

Date: 22 September 2015

Signed:

Schools Adjudicator: Mrs Carol Parsons