



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3254

Objector: Two Members of the public

Admission Authority: The Academy Trust for The Ecclesbourne School, Belper, Derbyshire

Date of decision: 14 July 2017

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2018 determined by the governing body on behalf of the academy trust for The Ecclesbourne School, Derbyshire.

I have also considered the arrangements in accordance with section 88I(5) and find 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 this determination.

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 two members of the public (the objectors), about the admission arrangements (the arrangements) for Ecclesbourne School (the school), an academy school for students between the ages of 11 and 18 for September 2018. The objection concerns the absence of a priority for admission to the school for those living in the area where the objectors' home is located.**
- 2. The local authority for the area in which the school is located is Derbyshire County Council. The local authority is a party to this objection.**

Jurisdiction

3. 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 governing body on behalf of the trust, which is the admission authority for the school, on that basis.
4. The objectors submitted their objection to these determined arrangements on 22 February 2017. The objectors have asked to have their identity kept from the other parties and have met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of their names and address to me. 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. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

5. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
6. The documents I have considered in reaching my decision include:
 - a. the objectors' form of objection dated 22 February 2017;
 - b. the school's response to the objection and supporting documents which it has supplied;
 - c. the comments of the local authority on the objection and supporting documents which it has supplied;
 - d. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2017;
 - e. a number of maps of the area showing the understanding of the parties concerning the historical and contemporary boundaries for the school's normal area;
 - f. confirmation of when consultation on the arrangements last took place;
 - g. copies of the minutes of the meeting at which the governing body of the school determined the arrangements; and
 - h. a copy of the determined arrangements.

The Objection

7. The objectors say that the school failed to carry out a consultation which met the requirements of paragraphs 1.42 to 1.45 of the Code in the period leading up to its determination of the arrangements, and also of those which the school determined for admissions in 2016. They also complain that the arrangements for both 2016 and 2018 fail to set out clearly the school's catchment area and so are in breach of paragraph 14 of the Code concerning the clarity of admission arrangements as a whole and of paragraph 1.8 concerning the clarity of the oversubscription criteria used within the arrangements.

Other Matters

8. Paragraph 1.14 of the Code requires that: "...catchment areas **must** be designed so that they are reasonable..." and Paragraph 14 of the Code states that: "...admission authorities **must** ensure that the practices and criteria used to decide the allocation of school places are fair, clear and objective."
9. I have raised with the parties to the objection my concern that the arrangements may fail to comply with both these requirements. My concern is based on the fact that the catchment area excludes a geographical area from the normal area for any secondary school in Derbyshire and so may not be reasonably designed, and because of the effect which this exclusion has in being unfair to those children living there.

Background

10. The LA's guide for parents who are seeking a place at a secondary school in the county in September 2017 says that:

"The normal area is a defined geographical area, which the school serves. You will be advised of your normal area school if you apply online or by phone. Alternatively, you can enter your postcode into an interactive tool on our websiteto find out what your normal area school is."
11. Derbyshire County Council has historically operated a system of coterminous normal areas such that each address in the county is in the normal area for a secondary school (or two, if the address falls also within the normal area defined by a Roman Catholic school). The school is located in the county of Derbyshire on the edge of the city of Derby, which is a separate admission authority. The border of the normal area defined in its arrangements for the most part runs along the boundary between the two authorities. In terms of the Code, the normal area for a school in Derbyshire operates as a catchment area which is used to give priority to applicants if the school is oversubscribed. I therefore consider the use of the normal area to be governed by paragraph 1.14 of the Code which provides 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.”

12. The school became an academy in March 2011. For the intake in September 2017, the school was oversubscribed with first preferences for the 240 places which it provides in Year 7. The objectors are parents of two children of secondary school age and recently moved house to live in the area known as “Poppyfields” which they believed to fall within the normal area served by the school. They failed to secure places at the school for their children and were informed that their address did not fall within the school’s normal area.
13. When the school determined its admission arrangements for September 2016 it was concerned that a new housing development of 400 houses which was taking place inside its defined normal area would lead to what it describes as “overcrowding” at the school. It determined arrangements which excluded the area of the development from its normal area at that time. Having received additional capital funding as a result of a section 106 agreement with the developer, the school decided to reinstate the area of land where the development took place when it determined its admission arrangements for September 2018.
14. “Poppyfields” is adjacent to the land where the housing development took place, and was the subject of a smaller and separate housing development consisting of 23 houses. It lies to the south of Memorial Road and its own southern and western boundaries follow the boundary between Derbyshire County Council and Derby City. Thus it falls within Derbyshire County Council’s area. It was not included in the area which the school reinstated to its normal area in its admission arrangements for 2018. These state in a footnote that :

“The area indicated on the attached ‘normal area’ map is reinstated following its removal in 2015.”

15. As I shall set out below, an understanding of this statement requires an understanding of what the area removed in 2015 comprised or, in other words, whether Poppyfields was part of the school’s normal area prior to the changes consulted on in 2015 and put into effect in 2016. There is disagreement on this point between the parties and it is this disagreement that lies at the heart of this case.
16. The school’s admission arrangements for 2018 also say that if the school is oversubscribed, priority will be given in the following order:
 - (i) Looked after and previously looked after children;
 - (ii) Children living in the normal area who have a sibling at the school;
 - (iii) Other children living in the normal area;
 - (iv) Children not living in the normal area who have a sibling at the school;

(v) Children of members of staff who have been at the school for at least two years, and

(vi) Other children.

17. For admissions in September 2017, no places remained available for children to be admitted under the final criterion, but 17 children living outside the normal area who had siblings at the school and four children of members of staff have been allocated places. In other words, 21 children who did not live in the school's normal area secured places there.

Consideration of Case

18. The objectors complain that:

- a. the area in which they live (that is Poppyfields) was historically part of the normal area of the school, and
- b. that the school did not consult on its removal along with the area that was scheduled for the larger housing development prior to the determination of its admission arrangements for September 2016.

19. The objectors believe that this area should then have been included in the school's normal area in the arrangements for September 2018 when the area removed in 2016 was reinstated.

20. The objectors base their objection on what they see as the school's failure to deal with the area known as Poppyfields in either the consultation removing part of the normal area or the consultation restoring part of the normal area. Their case is that Poppyfields was part of the area removed in 2016 and should have been part of the area reinstated in 2018. The objectors say that the requirements of the Code concerning consultation have not been complied with by the school because this change has not been made explicit at any time.

21. I have no jurisdiction to consider that part of the objection which is in respect of the consultation on the school's admission arrangements for 2016 or on these arrangements themselves, since the last date on which such an objection could be made was 30 June 2015. I have informed all of the parties of this.

22. The wording of the school's arrangements for September 2018 refer to an area of land previously removed from its normal area and the objectors further complain that this leaves the arrangements open to interpretation - in the sense that it is not clear what the normal area comprises - and therefore insufficiently clear and in breach of what the Code requires.

23. The school has supplied me with the maps which it used in the consultations it carried out prior to determining its admission arrangements for September 2016 and those for September 2018. These maps are in my view clear in showing what was intended in

each case concerning the area to be included in the school's normal area. The school has expressed its understanding that:

- a. a part, but not the whole, of the Poppyfields area had historically been within its normal area;
- b. this part of the Poppyfields area had been removed for 2016 and not reinstated for 2018;
- c. that part of the Poppyfields area in which the objectors now live was not part of the school's normal area prior to 2016, and
- d. no part of the Poppyfields area is now included in the school's arrangements for 2018.

24. The question at issue for me is whether this area as a whole should be included in the school's normal area, being both the part that the school believes was in its normal area prior to 2016 and that which it believes was not. I shall refer therefore to the area simply as "Poppyfields" or "the Poppyfields area".

25. The same map was provided to me by both the objectors and the school as the one which the school used in the consultation it undertook prior to its determination of the arrangements for 2018. This map also accompanies the determined arrangements and makes clear what area is intended as that "*reinstated following its removal in 2015*". I shall return to the matter of clarity below.

26. I have also asked the school and the local authority to provide me with evidence concerning the detail of how the consultation on the 2018 arrangements was carried out. The school has confirmed that it wrote to the local authority in December 2016 asking it to publish its proposed arrangements for consultation, and that it also published them on its website.

27. I have asked both the school, as the body responsible for consulting on its proposed admission arrangements, and the local authority since it had carried out the consultation on the school's behalf, to give me evidence of how each of the requirements relating to consultation set out in the Code had been met. In particular, in view of the concerns expressed by the objectors about their lack of awareness concerning the normal area being proposed as part of the school's arrangements, I asked for evidence that the groups and organisations set out in paragraph 1.44 of the Code had been consulted. Included in this list are:

"parents of children between the ages of two and eighteen" .

28. The school has told me that it believed that by publishing its proposed arrangements on its own website and by asking the local authority to do the same, that

"this was sufficient for consultation purposes in order that the public

can gain access, which would include persons/bodies referred to...in paragraph 1.44.”

29. The local authority has told me, in spite of having been asked to provide information about the consultation which preceded the determination by the school of its arrangements for 2018, that:

“the admission arrangements for 2016-17 [emphasis by underlining added] and map were published on the Council’s website as required within the prescribed timescales”

but that it

“could not comment whether the school fully complied with sections 1.42 to 1.45”.

30. Consequently, I have been given no evidence that any more was done than the publication of the proposed arrangements on the school’s and the local authority’s websites. In my view, a requirement to consult places a duty on those concerned to do more than to “give access”, but that it necessarily involves the active engagement of, or an attempt to actively engage, the consultees. Effective engagement in the context of school admissions might take the form of written notification to other schools asking them to draw the consultation to the attention of parents, or an attempt to draw the existence of the consultation to the attention of those concerned by the placing of notices in local newspapers and by the use of social media. In this case, none of these things was done, and as a result my view is that the school has failed to meet the requirements concerning consultation which are set out in the Code. I therefore uphold this part of the objection.

31. Such a failure does not of itself, however, render the arrangements themselves non-compliant or invalid. I return now to the second aspect of the objection which concerns their clarity.

32. The objectors believe that because there has been confusion and a lack of clear information concerning the status of the area in which they live, that this means that the arrangements are not clear. The relevant part of paragraph 14 of the Code, which requires that admission arrangements as a whole are clear, is set out above in paragraph 8. The objectors also believe that since the normal area is used in an oversubscription criterion within the arrangements that paragraph 1.8 of the Code is also breached as a result of a lack of clarity. This has the following to say:

*“Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair.....”*

33. However, the clarity of the arrangements can only be judged in its own right, in terms of what is actually set out in them. The arrangements as determined include a map which shows the

boundary of the school's normal area and in particular the detail of that part of it which is relevant to Poppyfields. Although it is always helpful also to have a written description, this is not necessarily a practical proposition in the case of a large area in a rural or semi-rural setting, as is the case here. My view is that the maps included in the arrangements make clear the definition of school's normal area. As a result, I do not uphold that part of the objection concerning the arrangements which has been made on the grounds of a lack of clarity, since I am of the view that neither paragraph 14 nor paragraph 1.8 is breached in this regard.

34. Paragraph 1.14 of the Code says that:

*“catchment areas **must** be designed so that they are reasonable....”*

Paragraph 14 of the Code says:

*“admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.”*

I believe that the reasonableness of the school's normal area is bound up in this case with the fairness of the arrangements. I wrote to the school and the local authority asking them if they wished to comment on my concern that because the Poppyfields area was not included in the normal area for any school unfair disadvantage to the children living there might arise. I explained that I was considering whether as a result the arrangements could be considered fair. Neither the school nor the local authority has responded to this request. I also asked them to comment on my concern that the normal area may not have been reasonably designed, and again neither has done so.

35. In considering these matters, I believe it is helpful to explore the historical background to the normal area which the school has decided to use in its 2018 admission arrangements. The school has given me clear evidence that it took steps in 1997 to verify Derbyshire County Council's understanding of the boundary of its normal area at that time. The school has told me that: *“the original map was produced by taking snapshots from the ‘Ordnance Survey Street Atlas Derbyshire’.”*

36. The school has reproduced the maps in question for me. I am satisfied on the basis of what they show and what the school has said that in 1997 the school believed that its normal area included part of the Poppyfields area but not all of it, and that the local authority had verified this. The school says that it has used this area until the changes which it made for September 2016. This area's boundary stopped a little way short of the boundary with the City of Derby, thus excluding part of the Poppyfields area. The local authority by contrast, when commenting on the consultation which the school carried out, said that it believed that there had been an

error made during the consultation on the arrangements which were determined for September 2016. It believes that, at that time, the school had used an incorrect map of its existing normal area and that incorrect map left out part of the school's historical normal area – namely that part of Poppyfields closest to the boundary between the county and the City of Derby. It says that its own understanding was that the whole of the Poppyfields area should have been included in the normal area in 2016. The local authority believes that as a result of this error the area was then not reinstated together with the rest of the area removed in 2016. It has told me that since the removal of the area had never been the subject of a consultation by the school, that it has in its view remained part of the school's normal area throughout.

37. I have already given my view about the consultation leading up to the school's determination of its arrangements for September 2018 and that this was defective not as a result of being unclear, but in its failure adequately to engage those whom the school was obliged to consult. I have also said that this failure does not in itself invalidate the arrangements which have been determined. In addition, the maps supplied by the school clearly show that the Poppyfields area is outside the normal area determined for 2018. Thus I do not accept this interpretation on the part of the local authority and am of the view that the school's arrangements for 2018 do not include the Poppyfields area as part of its normal area.
38. On the basis of the information available to me, it would seem that a difference of understanding between the school and the local authority arose in 1997 possibly as a result of an insufficiently detailed map then being used to describe the school's normal area. This difference of understanding appears to have continued until 2005 without being recognised or addressed. It also appears from the information which the school and the local authority have given to me that when the local authority converted its information on normal areas to digital format in 2005, it showed the boundary for the school's normal area as following the boundary between the county and the city, thus including the whole of the Poppyfields area. As a result of this, the local authority's maps - but not the school's - included the whole Poppyfields area, in line with its view about the historical boundary. The school's account of what then followed is that it asked the local authority on what basis the local authority believed that it (the school) had agreed to a change in the boundary, but that no response was forthcoming. The local authority's account is that it understands that this revision to include all the Poppyfields area was "*agreed with the school at the time*", that is, between the school and itself.
39. Clearly, these accounts are at odds and I have recounted them here solely for the purpose of laying out what I understand to be the background concerning the school's admission arrangements for 2018 to be. My sole concern is to consider whether the arrangements for the school for 2018 comply with the requirements relating to

admissions or whether they do not.

40. The local authority has elsewhere confirmed that, in line with the statement set out above in its composite prospectus:

“Derbyshire County Council’s admissions criteria uses (sic) a normal area system to allocate places for its own school, and the vast majority of own admission authority schools within its area co-ordinates (sic) their own admission arrangements on the same basis.”

41. In such a context, where priority for admission to one of the schools appropriate to a child’s education is systematically given based on their address, a child for whom no such priority exists is at a disadvantage when seeking a place. This will particularly be the case if schools which are within a reasonable distance of their home are popular and oversubscribed. I am mindful that the admission data for The Ecclesbourne School for September 2017 show that no child gained a place who did not have such priority attached to their application unless they had an older sibling already in attendance or were a child of a member of staff.

42. I have been given no reason why the school should wish to exclude the area in question from its normal area, other than its understanding based on what may well have been an insufficiently accurate map dating from 1997. In September 2017, the school will admit all those living in its normal area and in addition 21 children who do not live there. I have asked the local authority to provide pupil projections for the school and for the Poppyfields area and it has given me detailed data which it summarises as follows:

“The conclusion is that there is sufficient capacity at The Ecclesbourne School to accommodate all the children living in the normal area (including Poppyfields if that is determined to be in the normal area), and those children who may move into new housing developments over the next five years.”

43. The school has not challenged the local authority’s data or the conclusion which it has drawn from it, other than to say that it believes that projections beyond one or two years into the future tend to be underestimates. I have asked the school if it has any rationale for not wishing to include the Poppyfields area in its normal area, but it has not done so. Neither has it or the local authority commented on the question of whether the exclusion of the Poppyfields area from the school’s normal area means that it fails to meet the requirement of paragraph 1.14 of the Code that catchment areas are *“designed so that they are reasonable”*, as I had invited them to do.

44. The use of the boundary between the county and the City would be consistent with the historical position for the county as a whole of there being comprehensive geographical coverage by normal area designations. It seems to me to be entirely probable therefore that

the area in which the objectors live was historically part of the school's normal area and that it was not included in 1997, and therefore subsequently, not intentionally, but as the result of an error.

45. Ecclesbourne School lies approximately three miles from the objectors' address, which from my own examination of a map on the school's website of the school's entire normal area (as it was in 2016) is somewhat nearer to the school than other parts of the normal area. The three next nearest secondary schools in Derbyshire are all about six miles away, and two of these lie in the same direction as Ecclesbourne School, but beyond it. It would not seem a reasonable proposition for the Poppyfields area to be added to the normal area of any of these three schools. My view is therefore that in the Derbyshire context which I have described, it is not reasonable for this small geographical enclave and the relatively few houses there not to be included in the school's normal area, and that this constitutes a breach of what paragraph 1.14 of the Code requires.
46. There are nearer secondary schools in the City of Derby, and I do not think it likely that the objectors will be unable to secure appropriate provision of education. However, in terms of the local authority area in which the objectors live, the effect of the school's arrangements is that there is a relatively small geographical "island" where for a limited number of addresses, no priority for admission to any school is given on the basis of location. Disadvantage will of course always result for those given lower priority in a particular school's admission arrangements, since their purpose is to regulate admissions in a situation of oversubscription. Nevertheless, children living in the Poppyfields area currently suffer a disadvantage which is greater than that of other Derbyshire children not living in the school's normal area when it comes to securing a place at a school in the county. All these other children will live in the normal area of another school and so be given a measure of priority for a place there.
47. Of course, no parent can expect to be guaranteed a place for their child at their preferred school. There are many cases also where parents cannot expect to be guaranteed a place at their nearest school as schools and dwellings are not always neatly located in patterns which will allow this. However, the Code does require that the basis on which priority is given to some children rather than others must be fair and what is fair will depend on the local circumstances.
48. In the case of this school I have been offered no rationale for the existence of the higher level of disadvantage which will face families living in Poppyfields compared with families in any other part of Derbyshire. Taking all matters into account, I am on balance persuaded that the failure to include the Poppyfields area in the normal area for a school, and therefore in practice of that of The Ecclesbourne School, causes unfair disadvantage to those living there, and that the school's arrangements fail to be fair and to comply with what the Code requires.

Summary of Findings

49. I have set out above the reasons why:

- (i) I uphold the objection that the school failed to meet the requirements concerning consultation set out in the Code prior to the determination of its admission arrangements for 2018;
- (ii) I do not uphold the objection that the arrangements as a whole are unclear or that they contain unclear oversubscription criteria;
- (iii) I have come to the view that by excluding a geographical area known as "Poppyfields" from the school's normal area this catchment area has not been designed so that it is reasonable, in breach of paragraph 1.14 of the Code, and
- (iv) the arrangements fail to be fair, which is a requirement set out in paragraph 14 of the Code.

Determination

50. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2018 determined by the governing body on behalf of the Trust for The Ecclesbourne School, Derbyshire.

51. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

52. 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 this determination.

Dated: 14 July 2017

Signed:

Schools Adjudicator: Dr Bryan Slater