



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3368

Objector: A member of the public

Admission Authority: The Governing Body of Broomfield Primary School, Chelmsford, Essex

Date of decision: 20 July 2018

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 for September 2019 determined by the governing body of Broomfield Primary School, Essex.

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 a member of the public (the objector), about the admission arrangements (the arrangements) for Broomfield Primary School (the school), a foundation school for students between the ages of 4 and 11, for September 2019. The objection concerns the school's designated catchment area and the extent to which it causes direct or indirect disadvantage.
2. The local authority for the area in which the school is located is Essex County Council. The local authority is a party to this objection.

Jurisdiction

3. The admission authority for the school is its governing body. It determined the school's admission arrangements for September 2019 on 13 March 2018, under section 88C of the Act.
4. The objectors submitted their objection to these determined arrangements on 22 March 2018. I am satisfied that the objection has been properly referred to me in accordance with section 88H of the Act and that 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 which was submitted on 22 March 2018 together with a copy of the school's determined admission arrangements for September 2019;
 - 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 2018;
 - e. a number of maps of the area showing the understanding of the parties concerning the historical and contemporary boundaries for the school's catchment 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 objector says that the school's catchment area is "selective" in nature. She states that it "noticeably avoids all Council and ex-Council properties" and "endeavours to include the more financially affluent areas".
8. The objector therefore believes that the arrangements are in breach of the requirements in paragraph 1.8 of the Code which says that :

*“Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with the relevant legislation, including equalities legislation.”*

9. She has told me that she believes that the oversubscription criterion which gives priority to those living in the catchment area *“is unreasonable, subjective, procedurally unfair and doesn’t comply with relevant legislation, namely equalities legislation.”* The objector says that the catchment area *“directly disadvantages children from particular social groups”*. I have stated in correspondence with the parties that my understanding of the objection is that it is that paragraph 1.8 is breached by the arrangements because of the nature of the catchment area.
10. The objector also makes reference to paragraph 1.9f of the Code, which says that oversubscription criteria must not *“give priority to children according to the occupational, marital, or parents applying”*. She believes the arrangement do this because the school has *“limited the catchment to roads where the average house price is considerably above the typical home in the area.....which clearly gives priority to children whose parents have a particular financial or occupational status”*.
11. Thirdly, the objector complains that the arrangements fail to meet the requirement in paragraph 1.13 of the Code which says that the means by which distance is measured between the school and a parent’s home must be set out clearly. She has further stated that this concern relates to her view that no distance measure is given as defining the catchment area and so it is not clear why the catchment area is limited to the listed roads. She complains that some roads included in the catchment area are further away from the school than others, such as her own, which are considerably closer to it. Further, she says, the school has not determined the point in the school from which all distances are measured.

Other Matters

12. I have raised with the parties to the objection my own concern that the arrangements may:
- (i) contain a statement about waiting lists which does not meet the requirements concerning them which are provided in paragraph 2.14 of the Code;
 - (ii) not provide priority for the admission of previously looked after children, as required by paragraph 1.7 of the Code; and
 - (iii) breach paragraphs 2.16 and 2.17 of the Code by failing to include statements which these paragraphs require concerning the admission of children below compulsory school age and concerning the admission of children outside their normal year group.

Background

13. The school's determined admission arrangements for September 2019 state :
 - (i) that the published admission number (PAN) is 45;
 - (ii) that children whose parents decide that they should not start full time at the start of the academic year will start part time in September then become full time in January;
 - (iii) that a waiting list will be maintained for late applicants/unsuccessful applicants;
 - (iv) that the criteria to be used to allocate places in the event of the school being oversubscribed are:
 - a. Children cared for by the local authority, as defined in section 22 of the Children Act 1989;
 - b. Children with siblings (as defined) at the school;
 - c. Children living in the listed roads;
 - d. Those living closest to the school, measured as a straight line to the front gate of the school. Distance so measured to act as a tie-breaker if oversubscription occurs within any of the criteria.
14. The local authority provides an online tool for parents which allows them to find the primary school in whose catchment area their address falls. The local authority has told me that this is not in fact possible for some addresses, since some schools which are their own admission authority do not designate a catchment area within their admission arrangements. Nevertheless, it is broadly the case that in Essex as a whole there remains a system of adjoining catchment areas for primary schools to which own admission authorities appear to have due regard. In fact, Broomfield Primary school, which is its own admission authority, initially responded to the objection saying that it did not determine its own catchment area and that this was the domain of the local authority. The latter was quick to point out that this was not the case.
15. The school has been a foundation school, and hence its own admission authority for many years. It has been, and remains, responsible for the determination of all aspects of its admission arrangements including the designation of any catchment area used to prioritise applications for places if it is oversubscribed. Neither the school nor the local authority has been able to give a precise date for its conversion to foundation status, but the latter believes that this took place as long ago as the early 1990's.
16. The school has told me that its catchment area has historically been linked to the boundaries of the civil parish of Broomfield. The current

definition, which consists of a list of roads, has not changed since it was adopted in September 2016. The school says that the consultation preceding this change was carried out in partnership with other local schools and the local authority, and that its purpose was to provide clarification for parents. The need to provide clarification had arisen from housing development which had taken place in the area, with new roads not appearing in the definitions of the catchment areas of the schools.

Consideration of Case

17. Paragraph 1.8 of the Code says :

*“Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply withal relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage, either directly or indirectly, a child from a particular social or racial group....”*

Paragraph 1.9f contains the following:

*“.....admission authorities.....**must not**.....give priority according to the occupational, marital, financial or educational status of parents applying.”*

The objector says that the catchment area used by the school breaches these provisions and that it does so because it includes affluent areas, and avoids less favoured ones. She complains that the catchment area for the school does not include her own address, which is nearer to the school than other addresses which do form part of the catchment area. She has usefully provided me with maps of the area which show these positions. In support of her view that the catchment area of the school is “selective”, the objector cites the proportion of children at the school “registered for free school meals” as being 7.9 per cent, comparing it with the national average of 13.46 percent. The source of this data was not given, surprisingly, given their apparent relevance to the objection, neither the school nor the local authority has commented on these data.

18. I have looked at the most recent published school census data, that for January 2017, which gives the percentage of children eligible for and claiming free school meals in state-funded nursery and primary schools as:

England as a whole: 14.1

Essex: 11.6

Broomfield Primary School: 9.6

I am able to rely on the accuracy of these figures and so will refer to them in what follows.

19. For the purpose of considering if the school's arrangements result in direct or indirect disadvantage to particular social groups, the relevant comparator against which to consider free school meal eligibility data is the local context of Essex, rather than the position for England as a whole. There is a significantly smaller difference between these figures than the one which the objector wishes me to take into account.
20. The objector's assertion is that there is direct discrimination against those from less advantaged homes as a result of the definition of the school's catchment area and that the arrangements breach Equalities Legislation. Section 13 of the Equalities Act 2010 says that there is direct discrimination if a person is treated less favourably than others because they possess a characteristic, listed as a protected characteristic, which others do not. However, social class is not one of the protected characteristics set out in the Equality Act 2010. It follows that the school's arrangements cannot fall foul of this Act on the grounds that they directly discriminate on the basis of social class, since the legislation does not apply to social class. I reject the objector's assertion that equalities legislation is breached.
21. However, the objector has also cited paragraph 1.8 of the Code, where indirect disadvantage to those from particular social groups is forbidden.
22. It seems to me to be self-evident that it is unlikely to be possible for the catchment area for any particular school to be drawn up so that it represents in microcosm the socio-economic character of either the nation as a whole, or the local authority in whose area it is located. This may be possible in some large secondary schools; but it would be much less likely to be achievable in primary schools which are generally much smaller – Broomfield with its PAN of 45 would expect to cater for no more than 315 children. Catchment areas are bound to vary in their nature for simple reasons of geography, especially where catchment areas are, or have been, drawn up so that collectively they cover the whole of an area, such as that of a local authority. That is, essentially, the context of the school's catchment area in Essex. So some school catchment areas in Essex can be expected to cover more socio-economically advantaged areas, and some areas of relative deprivation. The objection in the case before me is based on a view that the school's catchment area deliberately excludes deprived areas and deliberately includes less deprived ones. I have to decide whether that is the case, or whether its relative prosperity is a consequence of no more than the natural uneven geographical distribution of more expensive homes. In coming to a view about whether this is the case, I consider that the following range of factors are relevant:
 - a. the extent to which the school's catchment area does in fact contain disproportionately more economically favoured areas;
 - b. the origins of the catchment area and the extent to which it has

changed in recent years and the reasons for, and nature of, such change;

- c. the extent to which any changes to the catchment area have resulted from collaboration with other admission authorities locally.

23. The objection stated that the school's catchment area "noticeably avoids all Council and ex-Council properties." The school disputed this assertion, saying that areas of local authority and social housing are included. It later provided me with a list of the twenty roads named within its catchment area for which this is the case. The objector has pointed out that there must be very few children in each of these roads who are eligible for free school meals, given the total of such children in the school. The objector has also provided me with some statistical information of a social nature for the school's postcode area. This compares the types of property occupancy and sectors of employment there with UK averages. The objector believes that this data shows that the school's population should be expected to be more economically disadvantaged than that of the national average, and says that this is not borne out by its free school meal data. This data does show that there is a lower proportion of children in the school who are entitled to free school meals than is the national average for primary schools. Hence, in her view, the school can be seen to be selecting its intake on social grounds.

24. There are a number of concerns which I would have with the drawing of such a conclusion from the information which the objector has given to me. Firstly, and importantly, the relevant comparator when considering whether the school is being selective locally is the local context, not the national one. The free school meal figures which I have given above, which are accurate and up to date, show a lower level of free school meal eligibility for Essex than for the nation. So a lower level for the school than the national average does not indicate local social selectivity is present. Secondly, while the data presented by the objector does seem to me to indicate, for employment to a greater extent than for property occupancy, that the school's postcode area is unrepresentative of the UK as a whole, it says nothing about how it compares with the picture generally in Essex, which is the relevant comparison. Nor has the objector said what the relationship is between the school's location and the area represented by the postcode, but implies that the school is located at the centre of its postcode area, which I cannot assume. As far as I can see, there is no simple relationship between the two areas and one cannot be taken as being the same as the other. So I have not found this supporting evidence provided by the objector to be particularly persuasive.

25. What can be said from the information which has been given to me is that there is a difference between the free school meal eligibility figure for the school and that for the county of Essex as a whole. However, this difference is not large. It is the difference between 11.6 percent and 9.6 percent. The school has 315 places. So it has six or

seven fewer pupils who are eligible for free school meals than it would have if it mirrored the county as a whole. I have to consider whether this small difference is likely to have been deliberately arrived at or not.

26. The school's catchment area is clearly not a new creation, although there have been recent modifications. Its essential nature derives from its origin as part of the patchwork of primary school catchment areas originally drawn up by, or in collaboration with, Essex County Council. The objector has said to me that referring to the catchment area that has been used historically amounts to a "*this is the way that it has always been done*" approach. I disagree that this is what the school is saying. In contrast, it seems to me that the original rationale for the catchment area, and the clear confirmation which I have received from the local authority that recent changes to it have been made in conjunction with itself, are highly relevant to the question of any active social selection by the school. The evidence which I have seen is that the school has not set out to operate independently of other schools in order to arrive at this position.
27. The context in which the school operates is that there remains in place locally a good degree of collaboration between the different school admission authorities to ensure that all addresses are allocated to the catchment area of at least one primary school. The purpose of such an approach is to ensure that parents have clarity concerning the way in which admissions to primary schools operate, and therefore what the likelihood will be of their own child being admitted to a particular school. It is also to ensure that there is a reasonably accessible school place available to all children, even if this is not at a school preferred by their parents. This is a system which broadly serves the needs of children well. It is worth bearing in mind that an attempt to ensure that all schools had catchment areas which aimed to ensure all intakes reflected national average levels of free school meals would lead to very odd catchment areas indeed and to many children having to travel further to school.
28. Taking all these matters into account, I do not consider that the school has actively sought to achieve a socially selective catchment area. It has operated in a way in its local context that means that the effect in terms of the nature of its intake which can be seen to be present does not amount to indirect disadvantage being caused. The arrangements do not breach paragraph 1.8 of the Code. As a consequence, I am not of the view that paragraph 1.9f of the Code is breached by the arrangements. I do not uphold the objection which has been made on both these grounds.
29. Paragraph 1.14 of the Code says that "*catchment areas **must** be designed so that they are reasonable and clearly defined*". The Code has nothing more to say on how a catchment area for a school is to be constructed. The objector is unhappy that the distance from the school to a child's home is not the means used by the school to construct its catchment area. That is to say, she argues that all

addresses within a given distance of the school should be within its defined catchment area. Such an approach would mean that all school catchment areas would have to be circular, and so they would also have to overlap each other to a very considerable extent to ensure that each address was covered. This would mean many addresses would have to fall within more than one catchment area, and it would negate the advantages of the collective approach to catchment areas which I have outlined above. The Code does not require an approach to catchment areas which is based on distance from the school, only that when they are described, catchment areas are reasonable and clear.

30. The objector has, I believe, compounded what the Code has to say about the use of catchment areas and the use of distance to give priority to applications when a school is oversubscribed. She complains that since distance does not define the school's catchment area, paragraph 1.13 of the Code is breached. This provision requires that any distance measure which is used in admission arrangements is clear. The arrangements say that if places remain after those living in the catchment area have been admitted, or if the school is oversubscribed by such children, children will be admitted on the basis of home to school distance *"as measured by straight line distance to the main School Lane gateStraight line distances are measured by the Essex County Council"*. That is, the arrangements contain a clear statement which conforms to the requirement in paragraph 1.13 of the Code. As a consequence, I do not uphold this part of the objection.

31. Paragraph 2.14 of the Code says:

*"Each admission authority **must** maintain a clear, fair and objective waiting list....stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria."*

The arrangements say only that:

"The school will maintain a waiting list for late applicants/ unsuccessful applicants."

When the school responded to my concerns about the arrangements, it told me that its waiting list is ranked in line with its oversubscription criteria. However, the Code requires that admission arrangements make the specific statement in paragraph 2.14 within their arrangements. The school's arrangements do not do this and so fail to comply with what the Code requires.

32. The arrangements say that if the school is oversubscribed, priority will be given to:

"Children cared for by the local authority as defined in section 22 of the Children Act 1989".

Paragraph 1.7 of the Code says that:

*“...the highest priority **must** be given..... to looked after children and all previously looked after children.”*

The school has told me that this is its practice, but its arrangements do not say so as they do not refer to children who were looked after but are no longer looked after. They must do so in order to comply with the Code, which they therefore breach.

33. The Code at paragraph 2.16 stipulates the following:

*“Admission authorities **must** provide for the admission of all children in the September following their fourth birthday. The authority must make it clear in their arrangements that, where they have offered a child a place at a school:*

a) that child is entitled to a full-time place in the September following their fourth birthday;

b) the 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 not beyond the beginning of the final term of the school year for which it was made; and

c) where the parents wish, children may attend part-time until later in the school year but not beyond the point at which they reach compulsory school age”.

The arrangements state:

“All pupils gaining entry to the school’s Foundation Stage will be offered the opportunity to start full time at the beginning of the autumn term. Those applicants choosing to delay full time entry will start part time in September then full time in January”.

The school has informed me of its practice, which does not give effect to the entitlements conferred on parents by paragraph 2.16 of the Code. Neither do its arrangements contain the statement which this paragraph requires them to make in order that parents are made aware of the choices which schools must make available to them. The arrangements are in breach of paragraph 2.16 of the Code.

34. Paragraph 2.17 of the Code says:

*“Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.”*

Again, the school has told me that such a process exists, but the Code requires that its admission arrangements should make clear what this is. They fail to do so, and breach paragraph 2.17.

Summary of Findings

35. I have set out above the reasons why I:

- (i) do not uphold the objection, and
- (ii) consider that the arrangements do not conform with the requirements set out in paragraphs 2.14, 1.7, 2.16 and 2.17 of the Code.

Determination

36. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2019 determined by the governing body of Broomfield Primary School, Essex.

37. 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.

38. 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: 20 July 2018

Signed:

Schools Adjudicator: Dr Bryan Slater