



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3390 ADA3393 ADA3397

Objector: A member of the public, the local authority, and the headteacher of a local primary school on behalf of its governing board.

Admission Authority: Bedminster Down School Trust, for Bedminster Down School, Bristol

Date of decision: 22 August 2018

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 2019 determined by Bedminster Down School Trust for Bedminster Down School, Bristol.

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 the determination.

The referral

- 1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), three objections have been referred to the adjudicator by respectively a member of the public, the local authority and the headteacher of a local primary school, (the objectors), about the admission arrangements (the arrangements) for Bedminster Down School, (the school), a mixed 11 to 16 academy school for September 2019. All three objections are to the inclusion in the oversubscription criteria of two named feeder schools.**
- 2. The local authority for the area in which the school is located is Bristol City Council. The local authority is one of the objectors in this case and is thus a party to the case in that capacity as well as by virtue of being**

the local authority. Other parties to the objection are the school and the other two objectors, a member of the public and the headteacher of a local primary school.

Jurisdiction

3. The terms of the academy funding 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. The objectors submitted their objections to these determined arrangements on 29 April 2018, 3 May 2018 and 10 May 2018 respectively. The member of the public also objected to the process of in-year admissions as stated in the admission arrangements. However, this matter is out of my jurisdiction and has not been considered further. I am satisfied that in all other respects the objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
 - a. the objectors' forms of objection dated 29 April 2018, 3 May 2018 and 10 May 2018 and subsequent correspondence;
 - b. the admission authority's response to the objection and supporting documents;
 - c. further comments and additional documents from the local authority;
 - d. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2018;
 - e. maps of the area identifying relevant schools and priority areas;
 - f. confirmation of when consultation on the arrangements last took place;
 - g. copies of the minutes of the meeting at which the Bedminster Down Trust determined the arrangements; and
 - h. a copy of the determined arrangements.

The Objection

6. The objections concern the addition to the arrangements for admission

in September 2019 of priority within the oversubscription criteria for applicants who have attended either of two named feeder primary schools. The member of the public and the local authority cite noncompliance with paragraph 1.15 of the Code. This states that *“Admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds”*. The objectors suggest that the process was neither transparent nor reasonable.

7. The headteacher of a local primary school cites paragraph 1.15 and also paragraph 1.9b of the Code. This states that *“It is for admission authorities to formulate their admission arrangements, but they must not ... b) take into account any previous schools attended, unless it is a named feeder school.”* This objector suggests that one of the schools named in the admission arrangements cannot be described as a feeder as it is 2.5 miles away from the school.
8. After the objections had been received, and also after the closing date for objections, I received a letter from another academy trust representing a local primary school. (Cathedral Schools Trust representing Headley Park Primary School) This letter objected to the introduction of the two named feeder schools and also objected to the lack of consultation on the changes. The letter suggested that the Headley Park School had not been informed of the proposed changes. I am in possession of the consultation papers from the school which include details of the changes and an email which went to all schools in the area on 24 November 2017. Headley Park was included in the email recipients. I am satisfied that the consultation process was compliant with the Code therefore I have not considered this element of the late objection. I have, however noted the additional objection to the inclusion of the named feeder schools.

Other Matters

9. I have looked at the admission arrangements as a whole and noted five issues which may be in breach of the requirements relating to admissions.
 - The admission of children with Educational Health Care Plans (EHCP) is included in the oversubscription criteria. The Code, at paragraph 1.6 states that *“All children whose statement of special educational needs (SEN) or Education, Health and Care (EHC) plan names the school **must** be admitted”*. The admission of these children is not part of a school’s oversubscription criteria but forms a separate requirement.
 - The absence of a final tie breaker in line with paragraph 1.8 of the Code which states that *“Admission arrangements **must** include an effective, clear and fair tie breaker to decide between two applications that cannot otherwise be separated”*.

- The 2019 admission arrangements are not published on the school's website in line with paragraph 1.47 of the Code which says that *"Once admission authorities have determined their admission arrangements they **must** notify appropriate bodies and **must** publish a copy of the determined arrangements on their website"*
- The practice concerning admission of twins and same year siblings is unclear in the arrangements and does not conform to paragraph 14 of the Code which states that *"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. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."* The arrangements refer to *"the criteria above"* and this is not clear.
- The admission arrangements explain under the title *"Waiting Lists"* that the list will be maintained from 1 September to 31 October. Paragraph 2.14 of the Code states that *"Each admission authority **must** maintain a clear, fair and objective waiting list until at least **31 December** of each year of admission."*

Background

10. Bristol City Council has traditionally organised the South Bristol area into areas of "first priority" based on a geographical area around each of the eight secondary schools. In the language of the Code, first priority areas are catchment areas. As schools have become their own admission authorities these arrangements have been modified and for admission in September 2019 three of these schools do not make reference to the first priority area in their arrangements. The other five, including the school which is the subject of this determination retain reference to the first priority area at some point within their arrangements.
11. The school is a mixed 11 to 16 academy school in the South of Bristol. Currently it is a single academy school but is in the process of joining the Wellsway Multi-Academy Trust (WMAT). The school expects to join the WMAT in late autumn 2018 along with the two feeder primary schools named in the admission arrangements. There are currently 898 students on roll at the school. The Published Admission Number (PAN) for September 2019 is 216.
12. Prior to admissions into year 7 (Y7) in September 2017 all applicants to the school were accepted. For September 2017 admission there were 422 applications for the 216 places and for admission in 2018, this had risen to over 500, 318 of which were first preferences. This oversubscription is predicted to continue in future years.
13. Consultation on the admission arrangements for September 2019 was

undertaken by the local authority on behalf of the school between 27 November 2017 and 26 January 2018 in line with the requirements of the Code as to timing and duration of such consultation. In addition, the school wrote by email to all the schools in the area informing them of the consultation. This email was dated 24 November 2017. Nine responses were received in response to the consultation including a response from the local authority stating its opposition to the inclusion of priority for children who had attended the two schools.

14. At a meeting on 7 February 2018 the outcomes of the consultation were discussed at a full governing board meeting. The governing board formally adopted and determined the arrangements at that meeting and they were subsequently published on the school's website.

15. The oversubscription criteria are as follows;

- 1) Looked after and previously looked after children
- 2) Children attending Cheddar Grove and Wansdyke Primary Schools
- 3) Siblings living in the first area
- 4) Other children living in the first area
- 5) Siblings living outside the first area
- 6) Geography – out of area children by distance.

16. Cheddar Grove Primary School is the closest primary school to the school and is within its first priority area, Wansdyke Primary School is 3.2 kilometres away from the school and is in the first priority area for another secondary school.

Consideration of Case

17. The objectors believe that the naming of the two feeder primary schools is contrary to paragraph 1.15 of the Code because the process was not transparent and was not made on reasonable grounds. The objectors are concerned that children living within the first priority area will be disadvantaged as children from outside the area will have priority for places. This would mean that children within the area would have to go to a different school which would involve travelling further to their secondary school.

18. The local authority provided details of the expected rise in pupil numbers in Y7 for the next six years. The figures indicate that there will be a shortfall in places for Y7 pupils in the South Bristol schools of 19 in 2019 rising to 133 in 2023. A new free school has been approved for the area but a site has not yet been acquired and there is no confirmed opening date.

19. The member of the public drew my attention to the Integrated Education and Capital Strategy 2015 document produced by the local authority in which it shows the shortfall in places in South Bristol for admission in September 2019 to be 187. As this was written in 2015, I am assuming that the up to date figures provided by the local authority recently are likely to be more accurate. Both the member of the public and the local authority suggest that this increase in numbers in Y7 will put additional pressure on the school which is already heavily oversubscribed.
20. The member of the public also drew my attention to the school's funding agreement. She suggests that the naming of the two primary schools is contrary to the funding agreement which concerns only children living within the first priority area of the school. She suggests that by naming specific schools and by including a school outside the first priority area the school is "*indirect conflict with*" the funding agreement. I have studied the school's funding agreement and find that as well as requiring that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools the only reference to "*a relevant area*" relates to the area within which the school must consult on its arrangements. I therefore conclude that the funding agreement for the academy does not specify either that the school must serve the first priority area before giving any priority to any other children or that it cannot name feeder primary schools. I note further that in any case the school must (in common with other schools) give highest priority to all looked after and previously looked after children wherever they live by virtue of paragraph 1.7 of the Code and cannot therefore give the highest priority only to children living in its priority area.
21. The objection from the local primary school suggests that by naming the feeder schools the arrangements are contravening 1.9b of the Code. This paragraph says that the school cannot take into account any previous schools attended unless they are named feeder schools. As the two schools have been named as feeder schools, this requirement of the Code is satisfied.
22. The local authority suggests that the schools have been named as feeder primary schools because all three schools are intending to be part of the same MAT. It suggests as this was not mentioned in the consultation or the determined policy then this is a transparency issue. The school refutes this suggestion.
23. The school explains that some years ago the formation of a learning partnership brought together a number of primary schools to work with the school with the aim of sharing experience and to support transition between the primary and secondary schools. Some of these schools have subsequently joined MATs and have left this original partnership. There remain strong links between the two named feeder schools and the school. These include;
- sharing expertise at governing board level;

- primary languages in the primary schools are delivered by a secondary teacher for one day every two weeks;
- the school provides 0.2 full time equivalent teacher with a subject responsibility as primary sports co-ordinator;
- the school is the stable and consistent provider of IT support to the primary schools with a long-term service level agreement in place;
- teachers from all three schools share best practice visits and moderation in English and mathematics. Other visits allow secondary teachers to be updated with key stage 2 developments;
- the primary schools use the school's Science and PE facilities;
- students from the school engaged in Life Skills and Child Care visit the primary schools and provide reading sessions;
- leaders in the schools support each other through regular school improvement visits; and
- The school runs a week-long transition project for Y6 pupils.

24. The school says that the two schools were selected as feeder schools because of the long-standing close partnership, mutual support and shared values and ethos over several years. The school accepts that these reasons apply equally to the decision to join the same MAT but insist that it would be *“wholly inaccurate to say that we have only named the schools as feeder school because we intend to join the same MAT in the future”*.

25. I have seen the consultation documents relating to the change in the arrangements and the governing board's minutes when the responses were received and it is clear that the school was open in their proposal to name the two feeder schools. The consultation was in line with the Code and appropriate bodies were consulted in the process. I am of the view that the process of choosing the feeder schools was therefore transparent. From the school's submission to these objections and the lengthy list of curriculum, staffing and governance links between the schools I understand why the school has named these two schools as feeders. Such links will provide continuity and progression for the pupils from key stage 2 to 3 and I think this is reasonable. I am of the view that the feeder schools have been chosen on transparent and reasonable grounds and are therefore compliant with paragraph 1.15 of the Code.

26. Paragraph 1.15 of the Code deals with the choice of feeder schools but this is not the only issue which needs to be considered in this case. Paragraph 1.8 says that *“Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair and comply with all relevant legislation*

including equalities legislation.” Paragraph 14 requires that arrangements **must** be “*fair, clear and objective*”. To put it another way, not only must the grounds for choosing feeders be reasonable, but the effect of that choice must be fair and reasonable. All the objectors consider it unfair to prioritise children who may live outside the first priority area over those living within it and they suggest this would mean that any displaced children would not then have priority for a specific school.

27. The local authority has provided me with a table of all those children who attend primary schools within the school’s first priority area. There are five primary schools situated within this area and this includes one of the named feeder schools. It is important to note here that the arrangements at oversubscription criteria three and four apply to children living in the first priority area, not to children attending the primary schools situated in the area. Children who attend primary schools in the area but who live outside the area will be in the first priority area for another secondary school according to the local authority’s maps.
28. The maximum number of children in Y6 at these primary schools is the total of the five PANs (each of which is 60). Therefore, the potential number of children applying to the school from the primary schools in the area will be 300, if the schools are at capacity. The local authority predicts that the numbers will be very near capacity in Y6 in the next three years; 291 in 2019, 294 in 2020 and 293 in 2021. I note that all of these numbers exceed the PAN of 216 for the school by some margin. This means that it would not be able to provide a place for all children living in its first priority area should all apply, even without taking account of the need to cater for children with EHC plans and looked after and previously looked after children.
29. The school says that all the pupils who applied from the five schools in the first priority area have been successful in their applications to date including for admission in 2018. I have studied the number of pupils who applied for the school and are now in transition between Y6 and Y7 from the five schools within the first priority area. For admission in September 2018, 152 children applied for and will be admitted to the school from these five schools. This constitutes 56 per cent of all the pupils in Y6 in the primary schools and accounts for 70 per cent of the school’s capacity at Y7.
30. The allocated places for 2018 are as follows;
- | | |
|--|-----|
| Children with EHC plans | 2 |
| Looked after/ previously looked after children | 3 |
| Children with siblings living with first priority area | 46 |
| Children living within the first priority area | 108 |

Children with siblings living outside the first priority area	35
Other children living outside the first priority area	22
Total	216

31. These figures include all the children who applied from the local named feeder school, Cheddar Grove Primary, and three children whose applications were successful from the other named feeder school, Wansdyke Primary School. Cheddar Grove Primary School is the nearest primary to the school, 35 of its 59 pupils in Y6 applied for and will start at the school in September. Wansdyke Primary is the other named feeder school and is outside the school's first priority area. The arrangements prioritise applications from children attending this school after looked after and previously looked after children but before children living in the first priority area. The PAN for Wansdyke Primary School is 30. If the new oversubscription criteria were applied for 2018 and if all the children on roll at Wansdyke had applied to the school then this would have displaced 27 pupils from the above list. All these children would have lived outside the priority area for the school. I consider it unlikely that all the children from Wansdyke will apply for admission to the school but even if it were to be the case then no children living within the first priority area of the school would have been displaced based on 2018 figures.
32. For admission in September 2018, 56 per cent of the pupils attending schools which are situated in the first priority area applied for places at the school and were allocated places there.. As this priority is higher than that for children living outside the area and a number of children living outside the area also secured places, I can be confident that no child who lived in the priority area and wished to go to the school more than to any other school failed to secure a place there. I have seen no evidence and have no reason to suppose that this pattern will be very different in the future. Even with increased numbers, if this percentage is applied to the cohort for admission in 2019 then the number of pupils from with the first priority area making the school their first preference would be 163, in 2020 the figure would be 165 and in 2021 it would be 164. The school's PAN is 216 which allows for more than 40 children to be admitted other than those living in the first priority area. It seems highly likely that all those children living within the first priority area will be admitted in future years even taking into account the increase in numbers in the primary schools predicted by the local authority.
33. The objection from the local primary school (Parson Street Primary) indicates that about 50 per cent of its Y6 traditionally apply for the school. This is one of the five primary schools situated in the first priority area of the school. The school is situated near the boundary of the first priority area and therefore some of the pupils are likely to live within the first priority area of another school. Parson Street Primary has a PAN of 60 and in the current Y6 there 50 pupils. This number is expected to rise in the next four years. Of these 50 pupils, 23 applied for and will be admitted to the school in September 2018. All these

children live within the first priority area for the school.

34. The primary school (Headley Park School) which wrote to me after the objections had been submitted is one of the other primary schools within the first priority area of the school. In the current Y6 there are 56 pupils at Headley Park, 47 of whom have applied for and have been accepted at the school for September. This school is also situated near to the boundary of the first priority area and it is possible that pupils living outside this area may not be successful in the future, if they apply to the school. These children will all live within the first priority area for another secondary school. It is important to note that oversubscription criteria 3, 4, 5 and 6 apply to children living in or out of the first priority area and not to the primary schools which they attend.
35. Paragraph 1.8 of the Code having stated that oversubscription criteria must be “*reasonable, clear, objective and procedurally fair*” goes on to say that “*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*”. Children with statements of educational needs whose statements name the school must be automatically admitted. I have studied the proportions of children with English as a Second Language (which I have taken to be a proxy for races other than British) in all the schools involved in this case and these range from less than one per cent to nearly 14 per cent across the schools. This is a reflection of the racial diversity across south Bristol. The two named feeder primary schools fall mid-way in this range. I have also looked at the proportion of children in receipt of the pupil premium (an indicator social disadvantage) and these figures range from 15.8 per cent to 49.9 per cent. Again, the two newly named feeder primary schools fall mid-way in this range. I therefore conclude that the inclusion of the two named feeder primary school in the arrangements does not disadvantage any particular racial or social group.
36. Oversubscription criteria are designed to prioritise admissions and in any oversubscribed school there will be applicants who are not successful with their applications. In this case pupils from feeder schools which have close and useful links with the school which are of long standing will be given priority. Predictions for admissions in 2019 and beyond are that no children living with the first priority area will be denied a place because of this change and the only applicants who will be displaced are those not attending the feeder schools who live outside the first priority area. I do not consider this unfair. I also conclude that the selection of the feeder schools has been made on transparent and reasonable grounds as explained in paragraph 25 and there is no unreasonableness or unfairness to a group of children as a result. I do not therefore uphold these objections.

Other Matters

37. I consider that the following do not conform with the Code as explained in paragraph 9:

- The placement of children with EHCP within the oversubscription criteria
- The absence of a final tie breaker
- The publication of the 2019 arrangements
- The clarity of admission of twins and same year siblings
- The timings of the waiting list.

The Code requires that these aspects of the arrangements be amended so that they do conform with the Code.

Summary of Findings

38. I am of the view that the two named feeder schools have been selected on transparent and reasonable grounds and their inclusion creates no unfair or unreasonable effect. Consultation was comprehensive and in line with the Code and the links between the schools are extensive. I have studied the impact of these changes on the applicants to the school and I am satisfied that they do not disadvantage any particular social or racial group nor do they disadvantage any pupils who live in the first priority area of the school. I therefore do not uphold the objections.

Determination

39. 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 2019 determined by Bedminster Down School Trust for Bedminster Down School, Bristol.

40. 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.

41. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

Dated: 22 August 2018

Signed:

Schools Adjudicator: Ann Talboys