



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3399, ADA3433 and ADA3434

Objectors: Parents of children attending Abbey Road Primary School, Nottinghamshire

Admission Authority: Nottinghamshire County Council

Date of decision: 26 September 2018

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objections to the admission arrangements for September 2019 determined by Nottinghamshire County Council for Abbey Road Primary School, Nottinghamshire.

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), objections have been referred to the adjudicator by parents of children attending the school (the objectors), about the admission arrangements (the arrangements) for Abbey Road Primary School, Nottinghamshire (the school), a community primary school for children between the ages of four and eleven for September 2019. The objection is to:
 - a. the level of priority given to children who do not live in its catchment area who have an older siblings already at the school, when this older sibling had been refused a place at the school in whose catchment area the family lives because of oversubscription;
 - b. the reasonableness of the catchment area of the school, and those of other schools in its vicinity.
2. The local authority for the area in which the school is located is Nottinghamshire County Council, which the admission authority for the school and so the subject of this objection.

Jurisdiction

3. These arrangements were determined under section 88C of the Act by Nottinghamshire County Council (the local authority). One of the three objectors submitted their objection to these determined arrangements on 8 May 2018 and the other two on 14 May 2018. The objectors have each 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 addresses to me. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction.

Procedure

4. In considering these matters 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 8 May 2018 and 14 May 2018;
 - b. the school's and the local authority's responses to the objection and supporting documents;
 - c. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2018;
 - d. maps of the area identifying relevant schools and their catchment areas;
 - e. confirmation of when consultation on the arrangements last took place;
 - f. copies of the minutes of the meeting of the local authority's Children and Young People's Committee at which the arrangements were determined; and
 - g. a copy of the determined arrangements.

The Objection

6. The three objections are set out in identical, or very nearly identical, words. All three objectors have a child already in attendance at the school. Although they live outside its catchment area they wish to seek a place there for a younger sibling in September 2019. They complain that under the arrangements, this second child is very unlikely to be able to join their older brother or sister because of the low priority given to the siblings of children who live outside the school's catchment area. They argue that since they had sought a place for their older child at the school in whose catchment area they live but had not been allocated a

place there because of oversubscription, their status as out-of-catchment applicants for a place at Abbey Road Primary School for their second child is unfair. They argue that the oversubscription criteria fail to be reasonable and so breach paragraph 1.8 of the Code.

7. Secondly, the objectors say that the catchment area for the school, and those of nearby schools, do not meet the requirement in paragraph 1.14 of the Code that catchment areas should be reasonable. Their reasons for saying this are that these areas:
 - a. are designed such that the school in whose catchment area a person lives is not necessarily their nearest school;
 - b. can be too large for the capacity of the school which serves them, and so fail to accommodate all the children who live there.

Background

8. The school is located in West Bridgford, which is a suburb on the south eastern edge of the city of Nottingham, but in the local authority area of Nottinghamshire County Council. Nottingham City Council is a separate local authority. The school is one of a group of ten primary schools known locally as “the West Bridgford primary schools”, which are located within a short distance of each other. Five of the schools are their own admission authority, three of which are academy schools which use catchment areas in their admission arrangements. The two others are faith schools and have no catchment areas.
9. The local authority is the admission authority for the remaining five schools and these have the admission arrangements common to all such schools in the county, which includes the use a catchment area. Three of these are primary schools and two are separate infant and junior schools which have the same catchment area. So four schools for which the local authority is the admission authority admit children at Reception Year (YR). Their four catchment areas, together with the three catchment areas of the academy schools, cover an area whose boundary to the north and west is effectively the river Trent, where the county abuts the city of Nottingham. To the south and east of the area there are major roads. The four community schools are:

Abbey Road Primary School

Jesse Gray primary School

Lady Bay Primary School and

West Bridgford Infant School

All are situated on the northern side of the West Bridgford area and the catchment area of each of the four has a boundary with at least two of the others. Two of the three objectors live in the catchment area of Lady Bay Primary School and one in the catchment area of Jesse Gray Primary School.

10. The use of catchment areas in Nottinghamshire and the level of priority given to the siblings of children already at a school has been the subject of objections resulting in determinations in recent years. Prior to 2016, the local authority's admission arrangements for voluntary controlled and community schools (other than those with a faith designation) gave priority to those living within a school's catchment area, followed by priority to those living outside the catchment area, if the school was oversubscribed. In each of these categories, higher priority was given to those with an older siblings at the school. For September 2016 and 2017, the local authority removed the higher priority for siblings for those living outside a school's catchment area. This approach was challenged concerning the admission arrangements of one school for which the local authority was the admission authority, and the adjudicator concluded in the determination ADA3202, ADA3245, ADA3246, ADA3248 dated 31 January 2017 (which I shall refer to as ADA3202) that the arrangements were unfair. This determination required the admission authority to amend its arrangements, which it did for admissions in 2017 and it subsequently determined revised arrangements for September 2018. Both the revised 2017 arrangements and those for 2018 reverted to the previous oversubscription criteria concerning catchment areas and siblings for all the schools for which it is the admission authority. This approach has remained in place for September 2019 and so the oversubscription criteria for admissions to the school are:

- a. Looked after and previously looked after children;
- b. Children living in the catchment area with a sibling at the school at the time of admission;
- c. Other children living in the catchment area;
- d. Children living outside the catchment area with a sibling at the school at the time of admission;
- e. Other children living outside the catchment area.

11. As part of the determination in the case ADA3202, the adjudicator noted that across Nottinghamshire as a whole it was unusual for primary schools to be oversubscribed from within their own catchment areas. The objectors in this present case all live within the West Bridgford area and each was unable to secure a place for their child at their respective catchment area community school in recent years because of oversubscription from within the relevant area. The local authority has provided me with the following information concerning the recent history of parents finding themselves in this position for the four schools in the West Bridgford area for which it is the admission authority and which admit children to YR:

School	Number of children living in catchment area unable to gain a
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	place at school		
	2016	2017	2018
Abbey Road Primary School	Nil	4	5
Jesse Gray Primary School	13	Nil	6
Lady Bay Primary School	10	Nil	Nil
West Bridgford Infant School	Nil	Nil	7

12. The local authority is the admission authority for 165 primary schools in the county. In 2018, at eight of those schools which have their own catchment area and a further three primary schools which share their catchment areas with other schools children living in the catchment area were refused admission because of oversubscription there. A total of 41 children in Nottinghamshire were affected in this way in 2018, of which 18 were the children shown in the above table living in the catchment areas of three of the four schools in West Bridgford.

Consideration of Case

13. When it responded to the objections, the local authority referred to the history of objections to the admission arrangements for primary schools for which it is the admission authority described above, and to a further objection made concerning the arrangements which it determined for 2018. This most recent objection was to the consultation carried out by the local authority prior to its determination of the arrangements. The adjudicator in ADA3316 did not uphold the objection that this consultation had been flawed. The local authority has referred to this determination in its response to the present objections, saying:

“NCC has since consulted and determined admission arrangements for 2019-2020 and the oversubscription criteria remains [sic] the same as those determined for 2018-2019. The OSA determined (ADA3316...) that the admission arrangements 2018-2019 complied with the mandatory requirements of the School Admissions Code 2014. NCC consider that the admission arrangements for 2019-2020 and in particular the oversubscription criteria for community and voluntary controlled schools are reasonable, clear and objective (as required by paragraph 1.8 of the Admissions Code).”

14. The case which the local authority is making to me is that, firstly, a determination which found that the consultation leading to the determination of its arrangements for 2018 was not flawed means that the arrangements themselves complied with the Code and do so for 2019. It is mistaken in that view. Determinations issued by adjudicators are in respect of the objection which has been made concerning them,

unless the adjudicator uses the power under section 88I of the Act to consider the arrangements as a whole. In the case referred to by the local authority, the adjudicator found that the consultation was not flawed, and nothing more. Paragraph 28 of ADA3316 sets out this position.

15. Secondly, the local authority has also observed that:

“The school’s oversubscription criteria are reasonable, clear, objective and procedurally fair. They are consistent with the OSA determination dated 31 January 2017which found the current criteria to be compliant with the requirements of the School Admissions Code.”

16. ADA3202 found that the arrangements determined for 2016 and 2017 were unfair. As a result, the local authority reverted to the arrangements which gave a higher priority to those with siblings, for those living outside a school’s catchment area. Such arrangements do indeed strike a general balance between the needs of catchment area children and others with siblings already attending a school, as the local authority has told me it recognises. However, this does not mean that the arrangements cannot be challenged, or that they cannot be found wanting. Adjudicators do not substitute revised arrangements for those which they find to fail to comply with the requirements of the Code. More importantly in the context of this particular case they do not, and cannot, determine that a particular set of arrangements will always comply with the Code in all circumstances and will continue to do so over time. Section 88H of the Act allows any person to object to the admission arrangements of any school which have been determined by the admission authority for the year in question. The question which I must address is whether the arrangements which the local authority has determined for Abbey Road Primary School for 2019 do or do not comply with the Code in the circumstances of that year and that school.

17. It is worth at this point considering a further view which the local authority has expressed to me that:

“There is no requirement to have different arrangements or different oversubscription criteria for each school. In fact, it is generally clearer for parents (easier to understand) when the oversubscription criteria are the same.”

and that:

“Admission arrangements can be complex and it can be confusing for parents trying to understand the implications of different sets of admission arrangements. Changes to admission arrangements of one school could have wider and unforeseen consequences across an area.”

18. It is of course correct to say that there is no requirement for an admission authority to have different arrangements for each school for

which it is the admission authority. I think it unlikely that anyone would imagine that such a thing were possible, let alone desirable, across the number of schools for which a local authority of the size of Nottinghamshire is the admission authority. However, neither is there any requirement to have the same admission arrangements for every school, and so there is no inhibition to having different arrangements for a school, or for some schools, where this is warranted or necessary in view of local circumstances. It is indeed common for the admission authorities for large numbers of schools to have different arrangements for different groups of them. Common examples include where the same admission authority is responsible for both urban and rural schools. Local authorities which set the admission arrangements for community schools and some voluntary controlled Church of England schools frequently include a faith based element for the latter, sometimes on an individual basis. Nottinghamshire itself does this. The Code at paragraph 1.9 says:

“It is for admission authorities to formulate their admission arrangements....”

At the same time, paragraph 3.3 of the Code says that:

“Any person or body who considers that any maintained school or Academy’s arrangements are unlawful, or not in compliance with the Code or relevant law relating to admissions, can make an objection to the Schools Adjudicator.”

19. I do not think that the Code’s use of “school” in the singular in paragraph 3.3 is accidental. Admissions legislation and the associated regulations also make it clear that the requirements concerning admission arrangements apply to individual schools, irrespective of the number of schools for which arrangements are determined by the admission authority. It is therefore the case that the requirements concerning for example the reasonableness of oversubscription criteria, the matter complained of by the objectors, must if necessary be satisfied on a school-by-school basis. Against this background, I find that the argument made by the local authority that determining different arrangements for different schools is to be avoided in order not to confuse parents, is neither attractive nor compelling.
20. The objectors have made two associated complaints. These are that both the oversubscription criteria in the arrangements and the catchment area for the school, and those of nearby schools, fail to be reasonable. I shall consider initially the second element of the objections, that concerning the catchment area.
21. The objectors say that the catchment area for the school is unreasonable, first because the school is not the nearest school to where every family lives, and secondly because the number of children living there may be greater than the number of places which the school provides.

22. If both parts of what the objectors believe should be the case were in place, every parent would know that they would be guaranteed a place for their child at their nearest school. This would of course be an ideal situation in one sense, but it is simply not possible. In the first place, it cannot be the case when catchment areas cover a group of schools that the nearest school to every address will be the one in whose catchment area the address falls. If, for example catchment areas were circular, there would have to be significant overlap to ensure that every address was covered. This would mean that many addresses were in the catchment areas of more than one school, thus negating the purpose of catchment areas.
23. Secondly, catchment areas cannot be guaranteed to provide sufficient places for all the children living there at all times. School buildings cannot be expanded at will, and a local authority must have regard to the need for the efficient use of available resources in fulfilling its legal obligation to secure the provision of a school place for every child whose parent wishes to have one. In an urban area where several schools will potentially be within a reasonable travelling distance of most homes, a means is needed to regulate how places are allocated in line with the preferences expressed by parents, within the framework provided by the Code and legislation.
24. Nottinghamshire has historically used the designation of a catchment area for every primary school as a means for managing admissions, and that system is very largely still in place. Where a system of catchment areas is used in this way, every address needs to be covered and the capacity of the different schools taken into account when catchment areas are drawn up. The geographical shape of the catchment area for a given school will necessarily be the product of these, and other factors, such as transport considerations. However carefully catchment areas are designed, then, given these requirements, it will never be possible either for the nearest school for every address always to be the catchment area school, or for there to be a perfect match between the number of children living in a catchment area and the number of places which the catchment area school provides. The school's catchment area, and those of the nearby schools, seem to me to be subject to these factors as a natural consequence of the use of a patchwork of school catchment areas to cover a geographical area. It is because the number of children living in each catchment area can never perfectly match the number of places in the catchment area school in each year group, year in year out, in such a system that it is necessary also for there to be oversubscription criteria for each school.
25. It is at the heart of this case how the oversubscription criteria in the arrangements for the school employ residence by parents in the catchment area, since there is clearly a variety of ways in which this can be done. I shall have more to say below about how oversubscription criteria which involve residence in a catchment area are employed for a school when it is known that there is local oversubscription, when considering the part of the objections concerning the priority given to siblings. However, it seems to me that any unreasonableness that might

arise will be as a result of the oversubscription criteria employed in these circumstances, rather than because the catchment area for the school or those for other local schools have been unreasonably designed. As I have said, it is never possible when groups of schools have adjoining catchment areas which do not overlap for the catchment area of each school to be designed so that it is the nearest school to every address included in it. Although I have been given evidence which I shall discuss below that there is not a match between the number of children living in the catchment area and the number of places at the school, this does in my view of itself perforce render the catchment area unreasonable. I do not uphold this part of the objections.

26. I have set out above the background to the issue of oversubscription from within their catchment area of primary schools in Nottinghamshire. This is uncommon for the great majority of the schools for which the local authority is the admission authority. Since 2016 however, there has been a history of one or more of the schools in West Bridgford not having enough places to admit all the YR children living in their catchment areas who wanted a place. In 2018, this was the case for three of the four community schools there and, as I have said, this is a cluster of schools with common boundaries between their catchment areas. This means that a parent whose elder child is refused a place at their catchment area school is very likely to be offered a place at one of the other schools in West Bridgford. This is what happened to the elder child of each of the objectors in 2016 when both Jesse Gray Primary School and Lady Bay Primary School were oversubscribed from within their catchment areas, but Abbey Road Primary School was not. All three of the children were admitted there. Abbey Road Primary School has, however, been oversubscribed from within its catchment area in each of the two subsequent years, and the objectors fear that this will continue to be the case in 2019 when they will be seeking a YR place for their younger child. Because they do not live in the school's catchment area, there would be little prospect of this younger sibling securing a place at the school under the existing arrangements were this to be the case.

27. For most of Nottinghamshire, it seems from the information available to me that oversubscription from within a school's catchment area, if it happens, is a relatively isolated event. However, in West Bridgford it has existed for a number of years and it affects schools which are in effect a cluster of neighbouring schools. If a child's older sibling has been "displaced" to another school because of oversubscription, as long as the second school is not oversubscribed in the year when the younger sibling is seeking a place, they are likely to be successful in also gaining a place there. Under the arrangements common to all the schools for which the local authority is the admission authority, they would have the highest priority among those living outside the catchment, for whom some places would remain available. The two children would then both be at the same school, albeit not their catchment school. As I have set out above, it is not always possible for every child to be able to go to their catchment school and that does not automatically make arrangements unfair.

28. If the second school is oversubscribed however, the situation complained about by the objectors is likely to apply. The longer oversubscription from within their catchment area goes on for a group of schools, and the closer geographically the group of school to each other, the more likely that the younger sibling of a “displaced” older child will be affected. In the rest of the county, I can see no clear evidence that a group of neighbouring schools is affected in this way. The situation which has developed in West Bridgford in recent years, however, is different. A group of neighbouring schools has experienced oversubscription from within their catchment areas for some years. This means that the application at Abbey Road Primary School of the oversubscription criteria employed for all the primary schools in the county is very likely to affect a number of younger siblings living there in the way feared by the objectors.
29. The local authority has told me that its forecast of projected school numbers indicates that Abbey Road Primary School will be able to “*accommodate local demand*” for the next five years, and that in the West Bridgford area there has been a “*levelling off*” of demand following a period of rapid growth which had started in 2011/12. It has provided me with its projected demand for places in YR from within their catchment area for the four West Bridgford schools for which it is the admission authority for 2019 to 2023. These projections show each school having sufficient places for this demand within its current PAN.
30. At the same time, the local authority’s projected overall numbers on roll for the West Bridgford group of schools as a whole shows a shortfall in the number of places from 2020 onwards, which it says it plans to mitigate initially by providing temporary classrooms at a school outside the area, as the current school sites have no room to expand. It has also told me that it intends to provide a new primary school for a housing development with the area, and another is planned to mitigate a projected shortfall in places in the West Bridgford area in 2022.
31. Taking all this together, it may be that it will be possible for schools in the West Bridgford area to accommodate the numbers of children seeking YR places from within their catchment areas into the future, but this is contingent on a number of developments, not least the ability of the local authority to provide new schools in the area, and cannot be certain.
32. It is in any case the difficulty created by present circumstances for the admission of younger siblings whose older brother or sister was not able to secure a place at their catchment area school that is the subject of the objections. I am mindful that the local authority has told me that in September 2018 there were 18 children living in the catchment areas of three of the four West Bridgford schools for which it is the admission authority who were not admitted to YR because of oversubscription. If these have younger siblings, their parents may well face the same situation in the future which is now complained about by the objectors.
33. The objectors believe that the arrangements for Abbey Road Primary School, where each has a child who was refused entry at a neighbouring

primary school for which the local authority is also the admission authority because of oversubscription of that school from within its catchment area, are unreasonable. They draw a distinction between parents who have actively chosen a school which is not their catchment area school for an older sibling and those in their own position who sought their catchment area school but were not admitted. In their view, they were “*forced*” to send their older child to a school at which a younger sibling would have a reduced chance of gaining a place because they would be applying from outside the school’s catchment area. The local authority has told me that each of the older children of the objectors was admitted to Abbey Road Primary School through “*parental preference*”. By this I understand the local authority to mean that each parent will have named Abbey Road Primary School as one of their preferences. However, to imply that this was somehow their “*choice*” when they each also expressed a higher preference for their catchment area school is to stretch the English language to its breaking point.

34. The objectors take the view that their own younger child should be given a higher priority within the school’s oversubscription criteria than is currently the case, for example that equivalent to those living in the catchment area with a sibling. They understand that if this were to happen then another child living within the catchment area who did not have an older sibling at the school may not gain admission as the result of the higher priority given to their own child. The local authority has expressed its view that this possibility “*potentially disadvantages families with only one child*”.
35. I have considered very carefully the arguments put forward by the parties and the context described above of the local circumstances of admissions to Abbey Road Primary School. It is my view, first, that the development of oversubscription from within their catchment areas of a group of neighbouring primary schools, a position which has been evident for some years, and which cannot be said to have ended, requires the admission authority for those schools to recognise the implications for families with more than one child. Following the determination set out in ADA3202, the local authority has indeed provided a general balance between the needs of families with siblings and those living locally in the arrangements which it has determined for all the primary schools for which it is the admission authority. However, it has failed to accept that particular circumstances may require it to modify these arrangements to ensure that what the Code requires can be provided in the case of every school. It is perfectly possible for the local authority to do so.
36. Secondly, I agree with the objectors that their own position of having to apply for a place at the school for their younger sibling on the same basis as any other parent living outside the school’s catchment area is not the result of their own choice. This makes what is reasonable when considering their circumstances different to what is reasonable for a family whose own actions have led to the same situation. I consider it entirely possible for the local authority to recognise the position of older

“displaced” siblings in the arrangements which it determines for its schools, and to make a distinction between families which are in this position and those who have actively chosen a school other than their catchment area school for an elder child.

37. Thirdly, I have considered whether giving a higher priority to the younger siblings of a “displaced” older brother or sister would itself cause arrangements to be unfair for another child living in a school’s catchment area but without an older sibling who was then refused a place. This would not of course be a matter concerning solely families with only one child, as the local authority has characterised it. An applicant who did not have an older sibling at the school may equally have one at another school, or may have a younger brother or sister at home.
38. If a family chooses a second, non-catchment area school for a younger sibling, then they themselves are accepting the consequences of doing so. If a family has a younger sibling but does not secure a place at their catchment area school because of oversubscription there which is partly caused by giving higher priority than currently to “displaced” siblings, then they will be in the position of the objectors, and admission arrangements which recognise “displaced” older siblings at another school will almost certainly enable that younger sibling also to be admitted there. In other words, both the original and the second family will be likely to be able to send their children to the same school. The authority already recognises the importance, for all the educational and practical considerations that are present, of enabling siblings to go to the same school where their parents desire this. As a result, children without an older sibling who live in a school’s catchment area may already fail to secure a place at the school if many living within the catchment area with siblings apply. My view is that the greater need which the local authority recognises for such a place to be used to keep siblings who live in a school’s catchment area together is matched by the greater need of a younger child who has a “displaced” older sibling. In failing to recognise this, my view is that the oversubscription criteria for Abbey Road Primary School fail to be reasonable.
39. Taking each of these matters into account, it is my view that the arrangements for the school contain oversubscription criteria which fail to be reasonable. I uphold this part of the objection.

Summary of Findings

40. I have explained in the foregoing paragraphs why I have:
- a. upheld that part of the objections that the oversubscription criteria for the school fail to be reasonable; and
 - b. not upheld that part of the objections concerning the reasonableness of the school’s catchment area.

Determination

41. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objections to the admission arrangements for September 2019 determined by Nottinghamshire County Council for Abbey Road Primary School, Nottinghamshire.
42. 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: 26 September 2018

Signed:

Schools Adjudicator: Dr Bryan Slater