



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3501

Objector: A member of the public

Admission authority: Birmingham City Council for Harborne Primary School, Birmingham

Date of decision: 7 May 2019

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 2020 determined by Birmingham City Council for Harborne Primary School, Birmingham.

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), an objection has been referred to the adjudicator by a member of the public (the objector) about the admission arrangements (the arrangements) for Harborne Primary School (the school), a community school for children aged 4 to 11 for September 2020. The objection concerns the way in which home to school distance is measured and lack of consultation on this issue.
2. The local authority for the area in which the school is located is Birmingham City Council (the Council) which is also the admission authority for the school and a party to this case. The other parties to the objection are the governing board of the school, the objector, and the local Member of Parliament.

Jurisdiction

3. These arrangements were determined under section 88C of the Act by the Council on 12 February 2019. The objector submitted her objection to these determined arrangements on 11 March 2019. 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

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 objector's form of objection dated 11 March 2019 and supporting documents including a letter from the local Member of Parliament;
- b) the arrangements;
- c) a copy of the minutes of the meeting at which the Council determined the arrangements;
- d) the Council's response to the objection, supporting documents and response to my enquiries;
- e) maps of the area identifying relevant schools; and
- f) confirmation of when consultation on the arrangements last took place;

The Objection

6. From September 2019 the school will begin to teach children in an annex approximately one kilometre from the main school site. The objector said that the opening of the second site was "*a major change to the school which would require a consultation on the admission arrangements*" and this had not taken place. The requirements for consultation on admission arrangements are set out in paragraphs 1.3 and 1.42 to 1.45 of the Code.

7. The distance a child lives from the school is a major factor in determining their priority for a place. The objector said that it was not fair to families living near the annex to only take into account the distance they lived from the main school site and not to take into account their proximity to the annex. Paragraph 1.13 of the Code refers to the measurement of home to school distance while paragraph 14 requires that the arrangements are fair.

8. The third part of the objection was that only measuring distances from the main site discriminated against children living in Sandwell rather than Birmingham. The objector said this was contrary to the Code. The Code makes reference to *R v Greenwich London Borough Council, ex parte John Ball Primary School* (1989) 88 LGR 589 [1990] Fam Law 469 (the Greenwich judgement) which held that pupils should not be discriminated against in relation to admission to the school simply because they reside outside the local authority area in which the school is situated.

Other Matters

9. Paragraphs 2.16 and 2.17 of the Code require admission authorities to make clear in their arrangements certain details regarding the admission of children below compulsory school age, deferred entry to school and admission outside of the normal age group. The arrangements did not appear to meet these requirements.

Background

10. The school is situated about five kilometres south west of the centre of Birmingham. The school is on a constrained site on Station Road with no playing field; the school uses the Metchley playing field which is just over 600m south east of the main Station Road site. The Council identified the need for additional primary school places in the Harborne ward and in 2014 sought expressions of interest from schools in the area for the provision of those places. The school was selected to provide an additional 210 places taking its capacity from 630 to 840, increasing the published admission number (PAN) from 90 to 120. It was initially proposed the new places would be built in an annex on the Lordswood Girls School site which is just over one and a half kilometres north west of the Station Road site.

11. Difficulties securing planning permission at the Lordswood Girls School site led to the proposal to construct the annex on Court Oak Road. That site is just over one kilometre to the west of the Station Road site. Statutory proposals to enlarge the school premises were published on 11 January 2018 and approved by the Council on 26 March 2018.

12. The proposal was for the school first to admit 120 rather than 90 pupils in September 2018, initially accommodating the additional class of 30 children on the Station Road site. This class would transfer to the annex on Court Oak Road when it was complete in September 2019 and would be joined by an additional class on that site every year until full.

13. The oversubscription criteria for the school can be summarised as:

1. Looked after and previously looked after children
2. Children who will have a sibling at the school
3. Children who live nearest the school

14. The arrangements say “*priority is given to those who live nearest the school, measured in a straight line from the child’s home address to a designated point on the school premises.*”

Consideration of Case

Consultation

15. The objector said that the opening of the second site was “*a major change to the school which would require a consultation on the admission arrangements*” and this had not taken place. Paragraph 1.4 of the Code permits admission authorities to admit more children than the figure stated in the PAN and paragraph 1.3 says that when a local authorities proposes to increase the PAN at a community school it need only consult the governing board of the school. There is, therefore, no requirement for the Council to have undertaken public consultation before admitting more than 90 children or when raising the PAN to 120.

16. Paragraph 1.42 of the Code says “*When changes are proposed to admission arrangements, all admission authorities **must** consult on their admission arrangements (including any supplementary information form) that will apply for admission applications the following school year. Where the admission arrangements have not changed from the previous year there is no requirement to consult, subject to the requirement that admission authorities **must** consult on their admission arrangements at least once every 7 years, even if there have been no changes during that period.*”

17. For 2020, the council proposed decreases to the PAN at two schools for which it is the admission authority; it was required to consult on those changes and from the report to the Council’s Cabinet dated 12 January 2019 it would appear to have done so as required by the Code. Included in this consultation was the proposal to increase the PAN at four other schools including Harborne. While there is not legal requirement to consult the public on such changes, it is of course open to admission authorities to consult if they wish to do so. No representations were received about the proposals for changes to any of the PANs in this consultation.

18. Because the Council was not proposing any change to the point in the school from which home to school distance was measured from 2019 to 2020, it was not required to consult on that issue.

19. The enlargement of the school by more than 25 per cent constitutes a ‘prescribed alteration’ and the Council was required to follow the process for statutory proposals set out in The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 to implement it. I am satisfied that the Council followed this process which included a four week period from 11 January 2018 when representations on the proposal could be made. I have reviewed the comments received during that process and note that concern was expressed about measuring distance from the Station Road site and not taking into account the location of the annex in Court Oak Road. The report to the Council

dated 26 March 2018 which led to the approval of the expansion included the comments concerning the point from which distance is measured and was clear that the proposal was for the measurement to be taken from the main Station Road site and this was agreed by the Council.

20. I am satisfied that the Council has undertaken all necessary consultation concerning the establishment of the annex which was the “*major change for the school*” referred to by the objector. The Council also consulted beyond what was required for the admission arrangements for the school in 2020 so I do not uphold the part of the objection concerning consultation. I will now turn to the question raised by the objector concerning the fairness of measuring distances from the Station Road site only.

The Fairness of Distance Measurement

21. Paragraph 14 of the Code says “*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.*” Regarding the measurement of distance the Code requires in paragraph 1.13 that “*Admission authorities **must** clearly set out how distance from home to the school will be measured, making clear how the ‘home’ address will be determined and the point in the school from which all distances are measured.*” Before considering the fairness of the way in which home to school distance is measured I needed to confirm the point in the school from which the measurement was taken.

22. Following the oversubscription criteria, paragraph 1.6 of the arrangements says “*priority is given to those who live nearest the school, measured in a straight line from the child’s home address to a designated point on the school premises.*” The next reference to distance measurement in the arrangements is in paragraph 9.3 which says “*Distances are calculated on the basis of a straight-line measurement between the applicant’s home address and a point decided by the school (usually the front gates). The Local Authority uses a computerised system, which measures all distances in metres. Ordnance Survey supplies the co-ordinates that are used to plot an applicant’s home address and the address of the school. The measuring point for each school is specified in the online prospectus on the Birmingham City Council Website.*”

23. The Council is not required to publish the composite prospectus for 2020 until 12 September 2019, however, it is required to publish the admission arrangements for those schools for which it is the admission authority for 2020 by 15 March 2019. Therefore, in my view it has not met the requirement to make clear the point in the school from which distances will be measured because the document in which that information is found is not yet available. When I raised this with the Council, it referred me to the prospectus for 2019 which does specify from where in the school distances were measured for 2019 and the Council stated that this was not changing for 2020. The Council also told me that the necessary detail for all schools will be published alongside the arrangements by the end of May 2019 and incorporated in admission arrangements in future years.

24. The 2019 prospectus states the point in the school where distances are measured from for all schools individually. For this school it says *“All distances are calculated on the basis of a straight line measurement between the applicant’s home address and the main entrance to the school building on Station Road.”* The objector said that they believe *“this discriminates against the children living close to the annex from attending the school.”* They continued to say *“It would be theoretically possible for children living up to 2km east of the annex being admitted, while we who could walk our children there are likely to be turned away. We believe that the admissions criteria should take into consideration distance from the annex for reasons of fairness as well as environmental impact, road safety and common sense.”*

25. In the letter of support for the objection from the local MP it said *“children living on the very same road as the annex, or closely near by, are being prevented from attending by this admission policy. Many children living on and around Court Oak Road – the location of the annex – are currently attending primary schools in Sandwell, because they are unable to access provision close to their home within their own Local Authority.”*

26. In its response to the objection the local authority said that the additional places were required for children living in Harborne and that measuring distance from the annex would lead to children from elsewhere taking up the new places.

27. The Department for Education database ‘Get Information About Schools’ (GIAS) identifies six other primary schools within 1.6 kilometres (1 mile) of the annex in Court Oak Road. I asked the Council to provide me with data about the pattern of admissions to these schools for September 2019. This data is shown in the following table.

School (Distance from annex)	PAN	Places offered	Greatest distance of point of oversubscription
Harborne Primary, main Station Road site (1.110 km)	120	120	1.842 km
St Mary’s Catholic Primary (1.143 km)	60	60	2.998 km
St Peter’s C of E Primary (0.917 km)	60	60	1.109 km
Welsh House Farm Community (0.805 km)	30	18	Undersubscribed
Our Lady of Fatima Catholic Primary (0.917 km)	30	30	Last place offered on basis of faith

School (Distance from annex)	PAN	Places offered	Greatest distance of point of oversubscription
Woodhouse Primary (0.966 km)	60	51	Undersubscribed
World's End Infant School (1.352 km)	90	90	0.788 km

28. Three of these schools are what are commonly known as faith schools and may give priority to children on the basis of faith. Only one of these was oversubscribed on the basis of faith with places being available for children on the basis of home to school distance at the other two. Two of the schools are undersubscribed and have places available. The data shows that with the exception of Our Lady of Fatima Catholic Primary School and World's End Infant School a child living close to the annex could have been offered a place at any of the other five primary schools for September 2019 because they live closer to them than the greatest distance to which a place was offered.

29. There is no entitlement for children to attend the school closest to their home. Furthermore, children are admitted to schools not particular school sites and it is for the headteacher and governing board to decide on which site children admitted to the school are educated. This means that a child living near the annex who was offered a place at the school could find they were placed in a class at the main school site. A child living near the annex who was not offered a place at the school would have several other schools within 1.6 km (one mile) of their homes where they could be offered a place. As children under eight years of age do not receive assistance with home to school transport until the walking distance is 3.2 km (two miles) I do not consider it difficult for children living near the annex to attend any of the schools which I have considered and can see no unfairness arising from this.

30. The other issues raised by the objector concerning environmental impact and road safety are matters which would have been considered by the planning authority before consent was given to construct the annex. These matters are not within my jurisdiction.

31. I think it reasonable that when new school places are created the admission arrangements for them give priority to children living where there is a shortage of places. I therefore find that the point in the school from which home to school distance is measured is reasonable and I can find no unfairness arising from it. I do not uphold this part of the objection.

Discrimination to Residents of Sandwell

32. The boundary between Birmingham and Sandwell runs in a south west to north east direction and at the nearest point is about 1.8 kilometres from the main school site in

Station Road and at the nearest point is about 0.9 kilometres from the annex in Court Oak Road.

33. The objector said that the Council “*stated that they will not consider this [measuring from the annex] because it would be more likely to allow children living in Sandwell to attend the school.*” She said “*I think this discriminates against children based on the local authority in which they live*”.

34. The Council told me that the only reference it had made to children from Sandwell was in a letter to the local Member of Parliament of 18 December 2018 in which it had explained that places were needed in Harborne and that by measuring distance from the annex it was likely that children from Sandwell would be admitted rather than from the area of need in Harborne. As stated above, it seems entirely reasonable to me that the admission arrangements for the school should give priority to children living where the new school places are needed. However, as the Greenwich judgement held pupils should not be discriminated against in relation to admission to a school simply because they reside outside the local authority area in which the school is situated I have considered whether there is any discrimination as suggested by the objector.

35. The oversubscription criteria in the arrangements take no consideration of the local authority in which a child lives. A child living, say, 1.9 kilometres north of the school in Sandwell has the same priority for a place at the school as one living 1.9 kilometres away east of the school in Birmingham. Children in both local authority areas are considered equally so I find no breach of the Greenwich judgement. I do not uphold this part of the objection.

Other Matters

36. Paragraph 2.16 of the Code requires that “*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.*” In addition Paragraph 2.17 says “*Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.*” I could not find where in the arrangements these requirements were met.

37. In response to my enquires on this point the Council drew my attention to paragraphs 5.5 to 5.12 in the scheme of co-ordination in which the admission of children below compulsory school age, deferred entry to school and admission outside of the normal age group are covered. The scheme of co-ordination is the process by which local authorities co-ordinate the distribution of offers of places for schools in their area, it is not the admission arrangements for the school which is where parents would be most likely to look

for this information. The Code requires that the admission authority make clear in their arrangements matters concerning the admission of children below compulsory school age, deferred entry to school and admission outside of the normal age group in the admission arrangements and I find that this requirement has not been met.

Summary of Findings

38. The Council was not required to consult on the admission arrangements for 2020 because it was not proposing to change any aspect of them other than to increase the PAN and consultation is not required to do this beyond with the governing board of the school. However, the Council did consult and received no responses on the matter. When deciding to enlarge the school, the Council followed the process set out in law and did take into account representations about where home to school distance should be measured from.

39. It is reasonable that when enlarging a school admission arrangements should give priority for the new places to children living in the area where they are needed. I find that should a child living close to the annex not be able to obtain a place at the school there are several other schools with a reasonable travelling distance of their homes where they could find a place and so no unfairness arises.

40. I find that the arrangements do not discriminate against children living in Sandwell and so they do not contravene the Greenwich judgement.

41. For these reasons I do not uphold the objection. I do, however, find that the arrangements do not contain what is required by the Code concerning the admission of children below compulsory school age, deferred entry to school and admission outside of the normal age group.

Determination

42. 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 2020 determined by Birmingham City Council for Harborne Primary School, Birmingham.

43. 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.

44. 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: 7 May 2019

Signed:

Schools Adjudicator: Phil Whiffing