



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3493

Objector: A parent

Admission authority: The Royal Borough of Kensington and Chelsea

Date of decision: 7 June 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 The Royal Borough of Kensington and Chelsea for Bousfield Primary School.

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 parent, the objector, about the admission arrangements (the arrangements) for Bousfield Community Primary School (the school), a school for children between the ages of 4 and 11 years, for September 2020. The objection is to the use of the distance between a child's home and the school as a means for giving priority to those wishing to have a place there for their child.
2. The local authority (LA) for the area in which the school is located is The Royal Borough of Kensington and Chelsea.

Jurisdiction

3. These arrangements were determined under section 88C of the Act by the LA, which is the admission authority for the school. The objector submitted his objection to these determined arrangements on 4 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.

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 letter and form of objection dated 4 March 2019;
 - b) the LA's response to the objection and supporting documents;
 - c) the LA's composite prospectus for parents seeking admission to schools in the area in September 2019;
 - d) a map of the area identifying relevant schools;
 - e) confirmation of when consultation on the arrangements last took place;
 - f) a copy of the determination approval signed by the LA's Director of Education;
and
 - g) a copy of the determined arrangements.

The Objection

6. The objector complains that the arrangements fail to comply with the requirements of the Code in two respects:
 - (i) by being unfair, and so breaching the requirement in paragraph 14, which states:
*"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."*, and
 - (ii) by not being reasonable, and so breaching the requirement in paragraph 1.8, which states: *"Oversubscription criteria **must** be reasonable*".

7. He believes that this is the case because the arrangements give priority, if the school is oversubscribed, to children on the basis of the distance between their home and the school. He takes the view that this is unfair to residents of the borough who do not live close to the school but who may, like himself, have lived where they do for a long time. It is his view that long-term residency within the borough should also afford priority, and that the arrangements as determined are not reasonable because this is not the case.

Background

8. Bousfield Primary School is located in the Earl's Court area of west London. It was rated "outstanding" by Ofsted when last inspected, in June 2008. It is very popular and heavily oversubscribed. Data provided to me by the LA show that the number of first preferences expressed by parents for the 60 available places in September 2019 was 132.

9. The objector first raised an objection to the admission arrangements for the school for September 2019, in May 2018. This followed the refusal of the school's admission authority, the local authority, to allocate a place there to his daughter at that time. However, he did so after the deadline for such objections, which was 15 May 2018.

10. In objecting to the school's admission arrangements for September 2020, the objector referred to this earlier attempt to challenge the oversubscription criterion of distance from the school, which has remained the principal oversubscription criterion employed in the arrangements. He restated his assertion that the use of this criterion rendered the arrangements unfair to the child of someone who is a long-term resident because "*transient residents living closer to the school are given precedence*".

11. The admission arrangements for the school for September 2020 are, in summary, as follows:

- (i) the published admission number (PAN) is 60
- (ii) following the admission of children whose Education, Health and Care plan names the school, if the school is oversubscribed the oversubscription criteria which are applied in sequence are:
 - a. looked after and previously looked after children (as defined)
 - b. children with a medical or social need for a place at the school (as described)
 - c. siblings of children at the school (as defined)
 - d. children of staff at the school (as defined)
 - e. children living closest to the school (as set out).

Random allocation is used as a final tiebreaker, if necessary.

12. The LA has also told me that because a high proportion of the available places are allocated each year to siblings of children already at the school, the furthest distance from which other children have been admitted in recent years has always been less than 0.2 miles, or approximately 350 yards. In 2018 this distance was 220 yards.

Year	Siblings admitted	Furthest distance for other admissions (miles)
2016	29	0.192
2017	28	0.128
2018	33	0.125

The objector has stated that the school is the nearest school to his address, and this has not been refuted by the LA. Although I have not been provided with this information by either of the parties, my own estimate, which I give here for the purpose of providing context, is that the objector lives about 0.5 miles from the school.

Consideration of Case

13. The objector believes that the arrangements contravene the Code in the ways and for the reasons which I have set out above. He has suggested in correspondence that the oversubscription criterion which gives priority on the basis of distance from the school should be amended to combine both distance and length of residency, but without being explicit as to how each individual's circumstances could be combined to give a single priority order for all applicants, as would be necessary for such an oversubscription criterion to be capable of being used in admission arrangements. The local authority has interpreted the objector's suggestion, possibly inaccurately, to imply that a minimum residency requirement would be involved and has set out the reasons why it considers that such a provision would itself constitute a breach of paragraph 1.8 of the Code.

14. However, my jurisdiction concerns the admission arrangements which have been determined, not hypothetical ones, and requires me to come to a view as to whether or not they conform to the requirements of the Code and the relevant admissions legislation. I shall therefore not examine further the opposing arguments which have been put forward by the parties concerning possible alternative oversubscription criteria, except in as much as they assist my consideration of those which have been determined and which are the subject of the objection which has been brought.

15. I shall consider first the question as to whether the oversubscription criterion which gives priority to children on the basis of the distance between their home and the school is reasonable. The objector complains that it is not, because it is unreasonable *"to long term local residents who wish to send their children to local (nearest) schools in the catchment area"*. Firstly, as the local authority has explained to me, it does not employ catchment areas to regulate admissions to primary schools in the borough (although there is one exception) and so the school has no catchment area as the objector asserts. There is therefore no more connection with the school, in terms of any expectation of securing a place there on the basis of living in a catchment area, for any given address than with any

of the other primary schools in the borough. In responding to the objection, the LA has however not explained to me why it gives priority on the basis of distance alone, limiting its response to an examination of the potential effect of a minimum residency requirement and saying why this would be inappropriate. I am therefore left to consider the question of reasonableness without any such justification from the admission authority.

16. In doing so I must decide whether the oversubscription criterion which the LA uses in its admission arrangements is in itself irrational. It is of course an oversubscription criterion employed by very many school admission authorities, particularly in respect of admissions of the youngest children to primary schools. There can be no doubt in my view that it is generally in the interests of very young children for them to go to school as close to home as possible, in order that travel times are minimised and to facilitate the important links that are then more easily made between school and home. It is therefore a rational approach on the part of the admission authority for such a school to give priority to those living closer to it than to those living further away, who may live closer to another school. Clearly, it is also possible for this approach to be nuanced to take account of situations where some children may find themselves not living near to any school. However, if this is not done it does not detract in my view from the overarching rationality of giving priority to children, especially the youngest children, living closer to schools. I have been presented with no argument in the case of Bousfield Primary School which would make me come to the view that this analysis cannot be applied to it, and as a result I do not consider that the oversubscription criterion which gives priority to those children living nearest to it fails to be reasonable. I do not uphold this aspect of the objection.

17. It is a separate matter as to whether the arrangements are fair. Arrangements may be reasonable in principle, but unfair in their effect. The objector has complained that the arrangements are unfair to long term residents. He is a long term resident of the borough and he does not live near enough to the school for his child to have gained a place there. He complains that he has been treated unfairly because no account is taken of his length of residence in the borough. The arrangements are plainly silent on the matter of length of residency, although the objector would prefer that they were not, and so this has no direct effect on admissions to the school. It is also difficult to see how the arrangements might have any indirect effect on the group of parents who have lived in the borough for a long time since there is no obvious link, from the evidence which I have seen, between length of residency and where someone lives in the borough. It seems perfectly possible for a long term resident also to live close to the school, and so for their child to be easily admitted to it under the oversubscription criterion which the objector complains about. So I have seen no evidence of any unfairness which is related to length of residence in the arrangements since it in itself has no effect, direct or indirect, on whether a child will be likely to gain a place at the school. What the objection has raised, however, is whether there is unfairness to those who live in a place where the arrangements mean that they are unlikely to secure a place at the school, however long they have lived there.

18. The data set out above shows that the popularity of the school, combined with the large number of siblings who apply for a place there, means that those living further than a

very short distance from it will fail to secure a place unless an older sibling is already in attendance. This is a situation which the LA says has existed “historically”. The objector has also pointed to the possibility that some families may move into the area near the school in order to secure a place for an older sibling, who will then enable their younger siblings to be given priority for a place at the school wherever the family lives. This is a scenario not unknown in urban settings in many parts of the country, and some admission authorities have taken measures to moderate the effect of such behaviour on other local residents.

19. It is important that I make clear at this point how I must consider the question as to whether the arrangements are fair. First, admission arrangements cannot provide the same degree of access to a school to all those seeking a place there. Oversubscription criteria must, by their nature, give priority to some children over others. They will and must disadvantage some applicants, and the Code in paragraph 1.8 requires that they do not disadvantage particular social or racial groups unfairly. Paragraph 14 also requires that the arrangements as a whole are fair. The question which I must address is, therefore, whether the effect of the arrangements is to cause an unfair disadvantage.

20. I have explained above the general reasoning that lies behind the use of the distance between a school and where a child lives as a means of giving priority when a school is oversubscribed, and I have said that this approach is a reasonable one. As I have also said, the question of the fairness or otherwise of arrangements must be considered in relation to their effect in practice on the group disadvantaged by them, in the light of the benefit which they confer on those given priority. Such an unfairness would most obviously arise in my view if the effect of a set of admission arrangements was that some children, those disadvantaged by them, were unable to secure a place at any school within a reasonable distance or within a reasonable travel time of their home. The map of the locality with which I have been provided shows that within approximately 1 to 1.5 miles of the objector’s home address, for example, there are 13 other primary schools in addition to Bousfield Primary School, comprising four community primary schools, five voluntary aided Church of England primary schools and four Catholic primary schools. That is a situation which would be replicated for all those living in the locality, to one degree or another. The objector has not suggested that the effect of the arrangements for Bousfield Primary School is to cause any of those failing to secure a place there not to be able to find a place at an alternative local school, and in view of the proximity of a significant number of them this would seem most unlikely. In the absence of any such evidence, I have no reason to believe that the disadvantage caused by the arrangements to children who live further away from the school is such that it causes an unfairness which outweighs the general benefit of using proximity as a means for giving priority for admissions. In consequence, I do not uphold this aspect of the objection.

Summary of Findings

21. For the reasons which I have set out above, I do not uphold the objection that the arrangements fail to be fair, or that they fail to be reasonable.

Determination

22. 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 The Royal Borough of Kensington and Chelsea for Bousfield Primary School.

Dated: 7 June 2019

Signed:

Schools Adjudicator: Dr Bryan Slater