



Determination

Case reference:	ADA3566, ADA3567, ADA3568 and ADA3569
Objectors:	Four members of the public
Admission authority:	John Hampden Grammar School for John Hampden Grammar School, Buckinghamshire
Date of decision:	17 July 2019

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 2020 determined by John Hampden Grammar School for John Hampden Grammar School, Buckinghamshire.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

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

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), objections have been referred to the adjudicator by four members of the public (the objectors) about the admission arrangements (the arrangements) for John Hampden Grammar School (the school), a selective academy school for boys aged 11 to 18 for September 2020. The objections concern the catchment area.
2. The local authority for the area in which the school is located is Buckinghamshire County Council (the local authority) which is a party to the objection. Other parties to the objection are the objectors, the governing board of the school and the academy trust also called John Hampden Grammar School (the trust).

Jurisdiction

3. The terms of the academy 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 on 6 February 2019 by the governing board on behalf of the trust, which is the admission authority for the school, on that basis. The objectors submitted the objections to these determined arrangements on 24 April, 8, 13 and 14 May 2019. 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. 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 24 April, 8, 13 and 14 May 2020 and subsequent correspondence;
- b) A copy of the minutes of the meeting at which the governing board of the school determined the arrangements;
- c) the arrangements;
- d) the admission authority's response to the objection, supporting documents and its response to my further enquiries;
- e) the comments of the local authority on the objection and supporting documents; and
- f) maps of the area identifying relevant schools;

The Objection

6. The first objector said that the inclusion of Maidenhead in the school's catchment area was unreasonable and did not comply with paragraphs 1.14 or 1.9f of the Code. Two other objectors used almost identical wording to also argue that the extension of the school's catchment area to include the town of Maidenhead and the surrounding area was not reasonable as required by paragraph 1.14 of the Code and was not in line with advice from the Department for Education (DfE) on catchment area changes.

7. The fourth objector also referred to DfE advice on catchment area changes and made similar points to the other three. In addition, he set out details of some problems he thought would accrue to boys living in Buckinghamshire from the extension of the

catchment area. This objector provided some data and other documents to support his objection.

Other Matters

8. When I considered the arrangements as a whole it appeared to me that the arrangements did not, or may not, conform with the Code in the following ways.
- a) Paragraph 14 of the Code requires that arrangements are clear, the arrangements include a published admission number (PAN) of 180 for Year 9, it did not appear clear if this was the correct PAN or how these places would be allocated.
 - b) In section 2.1 of the arrangements it says "*Boys from Buckinghamshire who qualify for entry and who have an Education Health and Care Plan that names the School will be admitted prior to the admission rules*". Paragraph 1.6 of the Code says that all children with an EHCP that names the school must be admitted, no condition regarding residence (in this case being "from Buckinghamshire") or other qualifying requirement is permitted.
 - c) The second oversubscription criterion is for 12 boys residing in the catchment area, eligible for the pupil or service premium who score between 115 and 120 in the selection test. The arrangements say that if there are more than 12 boys meeting this criterion, priority will be given to those living nearest to the school. A looked after, or previously looked after child could meet this criterion (having failed to meet the first by not scoring at least 121); paragraph 1.7 of the Code would require them to have highest priority.
 - d) The terms catchment area and priority area are both used in the arrangements and on the associated map. The use of two similar terms may not be clear; paragraph 14 of the Code requires that admission arrangements are clear.
 - e) Paragraph 2.14 of the Code says "*Each admission authority **must** maintain a clear, fair and objective waiting list until at least **31 December** of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria.*" The arrangements did not appear to comply with this requirement.
 - f) Paragraph 2.17 of the Code says "*Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.*" The arrangements did not appear to comply with this requirement.

Background

9. The school which became an academy in 2011 is situated in the south of High Wycombe near the junction of the M4 and A404. The school is part of the selective grammar school system that operates across the whole of Buckinghamshire. In this system, all children attending state-funded primary schools (unless withdrawn by their parents) take the eleven plus test in Year 6 and those achieving a score of 121 or more are deemed qualified for admission to one of the grammar schools. All parts of Buckinghamshire fall into the catchment area of one or more grammar schools.

10. The school has recently made a successful bid to the DfE for capital funding to increase the size of the school from September 2020. This bid required the school to take measures to increase the number of boys who are eligible for the pupil premium who are admitted to the school.

11. The PAN for Year 7 for 2020 is 180 as it was in 2019 having been 150 in earlier years. The school also intends to admit up to 30 additional boys into Year 9 in September 2020 only. The oversubscription criteria for Year 7 are stated in the arrangements and can be summarised as follows.

1. Looked after and previously looked after boys.
2. 12 boys eligible for the pupil premium or service premium who have scored 115 to 120 in the test who live in the catchment area.
3. Other boys eligible for either the pupil or service premium scoring 121 or more who live in the catchment area.
4. Brothers of boys at the school.
5. Boys with exceptional social or medical needs.
6. Sons of staff.
7. Boys living in priority area A.
8. Boys living in priority area B.
9. Other boys.

In any of the criteria, boys living closest to the school have priority with lots being drawn if a tie breaker is required.

Consideration of Case

12. The requirements for catchment areas are set out in Paragraph 1.14 of the Code which says "*Catchment areas **must** be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school.*"

13. The catchment area is in two parts labelled on the map as "*Catchment Area A*" and "*Catchment Area B*". Area A stretches across southern Buckinghamshire omitting the area in the south east of the county adjacent to Slough. It consists of the school's former catchment area together with parts of Buckinghamshire to the north of the former area. The main centres of population in this area are Gerards Cross, Beaconsfield, High Wycombe and Marlow.

14. Area B consists of part of Buckinghamshire to the north of Slough and part of the Royal Borough of Windsor and Maidenhead (the Royal Borough). The part of the Royal

Borough within Area A is encompassed by the Royal Borough boundary in the north and for most of the east until just before Windsor when it cuts across to the southern boundary of the Royal Borough and follows that boundary round to the west and back north to the border with Buckinghamshire. I estimate this area to be in excess of 25 square miles surrounding and including the town of Maidenhead.

15. As well as referring to paragraph 1.14 of the Code quoted above, the objectors referred to "*The Department for Education's advice on catchment area changes*". I am not aware of specific advice from the DfE about catchment area changes and so asked the objectors for a reference to this advice. I was told that the list of factors included in the objection was based on consultation on the School Admissions Code in 2009 which related to the School Admissions Code dated 2010, guidance to free schools, guidance on home to school travel and research on school partnerships. The School Admissions Code has been revised more than once since 2009 and it is the current version published in 2014 against which I am charged with assessing these arrangements. In addition to paragraph 1.14 I think that paragraphs 1.4 and 1.8 are also relevant to my considerations.

16. Paragraph 1.4 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.*" Paragraph 1.8 says "*Oversubscription criteria must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. 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, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child. Admission arrangements must include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated*".

17. I have also borne in mind *R v Greenwich London Borough Council, ex parte John Ball Primary School* (1989) 88 LGR 589 [1990] Fam Law 469. It was held that 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. This is known as the Greenwich Judgement. In *R v Rotherham Metropolitan Borough Council, ex parte LT and others* [2000] ELR the court found that it was permissible for local authority boundaries to be used as part of a catchment area boundary. This is known as the Rotherham Judgement.

18. The objectors said that the catchment area was clear, but not reasonable saying "*The school has provided no reason or explanation for the proposed change to its catchment area, or why the Maidenhead area has been chosen for out-of-county admission preference over any other out-of-county area.*" They referred to paragraph 1.9d of the Code which prohibits the introduction of any new selection by ability and said that "*Extending the catchment of a selective school into a comprehensive system in Maidenhead will effectively*

impose a selective education system into the whole of the town, over-riding the wishes of parents to send their children to a fully comprehensive school.”

19. In response to the objections, the school said that it currently has 174 students from Maidenhead which represents 16 per cent of the school. The school reported that it had held discussions with the Royal Borough which was “*very enthusiastic about giving parents choice of grammar or comprehensive, mixed education or single sex setting.*”

20. Maidenhead children have lower priority for places at the school than children living in Catchment Area A. Catchment Area A is larger than the former catchment area with consequently more children living in it. Therefore, although the school is now taking more children, it is possible that there could be fewer places available for children from Maidenhead.

21. The objectors argued that alleged low standards in non-selective schools in Buckinghamshire would lead to lower standards in comprehensive schools in Maidenhead. While the objectors have set out their clear concerns about what might happen as a result of the changes introduced to the school’s admission arrangements they have provided little evidence or argument to support why and how this might happen and there is very little weight or evidence in the objectors’ argument that it will. The objectors praise the quality of education available in Maidenhead; I note that children have been traveling from Maidenhead to this and other grammar schools in previous years and that this does not appear to have resulted in unsatisfactory standards in the town’s schools.

22. The objectors went on to say “*There is no evidence that the proposed additional catchment area will realise any educational benefits for Maidenhead schools*”. They said “*The proposals do not address any explained anomaly or education deficit in Maidenhead. There are none. All of Maidenhead’s schools are good or outstanding.*” There is no requirement that changes to the school’s admission arrangements should lead to benefits for Maidenhead schools or address what the objectors refer to as “*any explained anomaly or education deficit in Maidenhead*”. The test for me is whether the arrangements are or are not in conformity with the Code.

23. The objectors said that the cost of travel between Maidenhead and High Wycombe would prohibit low-income families from taking up places. However, as the objectors have said, if the cost of transport to High Wycombe is a problem for low-income families in Maidenhead there are a range of good schools closer to children’s homes.

24. Reference was also made by the objectors to paragraph 1.9d of the Code which prohibits the introduction of any new selection by ability. One objector said “*Extending the catchment of a selective school into a comprehensive system in Maidenhead will effectively impose a selective education system into the whole of the town*”. To my point of view, this is not the introduction of new selection by ability of the sort prohibited by the Code and the Act. The Act and Code are here concerned with the issue of whether or not a school which is not a selective school may introduce selection. It is not concerned with where pupils who may be admitted to an existing selective school live. And, as noted above, boys from

Maidenhead already attend the school and there is absolutely no reason in law why they should not do so.

25. One of the objectors was concerned about the effect of these arrangements on children living in Buckinghamshire and other parts of adjacent local authorities. His argument was that by including the area around Maidenhead in the catchment area, this discriminated against children living in Buckinghamshire, but outside of the catchment area, and other children living outside of that county.

26. Admission arrangements are intended to discriminate between children giving priority to some at the expense of others. They must do so fairly and reasonably. The Courts have held that it is unlawful to discriminate against children for admission to schools solely on the basis of the local authority area in which they live, although where it is sensible to do so, local authority boundaries can be used to define part of a catchment.

27. The most recent data on the local authority's website shows that in 2018, when the PAN was lower than it will be in 2020, all 109 boys living in Buckinghamshire who reached the required standard in the test and wanted to attend the school could do so. This left places for 41 children from outside of the county. In 2020 there will be 30 more places available than there were in 2018. Other than to looked after or previously looked after boys and boys eligible for either the pupil or service premium, priority will be given to be given to boys living in part A of the catchment area, which has been extended entirely within Buckinghamshire, over any boy from Maidenhead in part B of the catchment area.

28. It was also argued by two of the objectors that the inclusion of out-of-county children was unfair to children in Buckinghamshire because it led to "*pass mark inflation*". The argument was that out-of-county primary schools "*facilitate transfer test preparations*" and this is unfair to children in Buckinghamshire where "*schools are prevented from providing transfer test preparations*". One objector provided some anonymous quotes from school websites to support this view and data to show that out-of-county children did better in the test than children from Buckinghamshire. They argued that these higher scores led to the standardised pass mark of 121 representing a higher level of ability than it would if just the Buckinghamshire pupils were taken into account and so it was more difficult for in-county pupils to qualify for a grammar school place.

29. I do not dispute the data or the logic in this argument. I do, however, think that rather than the effect of tutoring, the higher performance of out-of-county children may be as much to do with them being a self-selecting group of high attaining children rather than the full ability range who take the test in Buckinghamshire primary schools. The data, also, is for the whole county, not specifically for the school subject to this objection. It remains the case that the law does allow parents to apply to schools in other local authorities and does prohibit admission authorities from discriminating on the basis of the local authority in which a child lives.

30. The objector who referred to paragraph 1.9f of the Code (which prohibits giving priority for school admission on the basis of the financial status of parents applying) argued that the children from the "*wealthy area*" of Maidenhead in particular benefitted from

tutoring. Inspection of indices of deprivation affecting children (IDACI) shows that overall all parts of the catchment area, in both local authority areas are similar with few areas of deprivation. The choice by a family to spend money on tutoring for children, is not only dependent on parents' financial status, but on how the family prioritises spending. A school which gave priority on the basis of a clearly defined, rational and fair catchment area would not be in breach of paragraph 1.9f solely if it happened that most of the homes in that area were expensive so that only relatively well off families could afford them. I do not consider paragraph 1.9f of the Code is breached.

31. The local authority said that when consulted about the new arrangements, it had concerns about the school including the area around Maidenhead in the lower priority catchment area without also including the part of Buckinghamshire to the north of Slough. The school responded to these concerns by including the area north of Slough in the catchment area.

32. Having considered the objections and the information provided by the school and the local authority I have formed the view that the catchment area is reasonable. I do not think that it will adversely affect the quality of education in Maidenhead and it is not unfair to boys living in the former catchment area or elsewhere in Buckinghamshire. I do not uphold the objection.

Other Matters

Admission to Year 9

33. The arrangements say "*For Admissions 2020 into Year 9 only the Governors are proposing to admit boys up to a total PAN of 180 for Year 9.*" By setting a PAN of 180 for Year 9, the school is saying that it will admit up to 180 boys in addition to those already in that year group. The school is actually planning to admit 30 boys into Year 9 in addition to the 150 already on roll. To do this a PAN of 30 would be required.

34. Once a PAN is set for a year group paragraph 1.6 of the Code says "*The admission authority for the school **must** set out in their arrangements the criteria against which places will be allocated at the school when there are more applications than places and the order in which the criteria will be applied.*" All the other requirements of the Code which apply to Year 7 also apply to the admission into Year 9 in 2020, even if it is a one-off event.

35. There is a section in the arrangements headed "*3. In-Year Procedure*". This describes the "*School's In Year Procedure*", the "*School's Late Transfer Procedure*", admission in September and immediate admission for boys who have moved into the area. I have looked at the section headed "*3.2 September Admission*" which is for "*Boys seeking admission to Years 8 or 9 at the start of the next academic year*". This treats applicants for Year 8 and Year 9 the same.

36. There is a fundamental difference between an admission authority planning to admit to an age group in September and admission at the beginning of other year groups (or indeed during any year group). Section 86 of the Act says that the only grounds for refusing

admission to a school is prejudice to *“the provision of efficient education or the efficient use of resources”*, and for a selective school, incompatibility with selection. For relevant age groups the PAN sets the number of admissions above which the admission authority believes such prejudice arises. The admission authority is required to have a set of oversubscription criteria to decide which children will be offered places if the number applying is above the PAN. Arrangements for admission to Year 9 for this school for 2020 must meet the same requirements set out in the Code as those for Year 7 as the school intends to admit additional boys to Year 9 that year. This is a different matter from the keeping of a list of children whom the school has refused admission to in other year groups and who may be offered a place if one becomes available.

37. In my view it is not clear when and how applicants for the 30 Year 9 places will apply for them, when and how they will be tested and what oversubscription criteria will be applied if there are more than 30 boys who qualify through the test. I find that the arrangements for the planned admission into Year 9 in September 2020 are not clear.

Education Health and Care Plans

38. In section 2.1 of the arrangements it says *“Boys from Buckinghamshire who qualify for entry and who have an Education Health and Care Plan that names the School will be admitted prior to the admission rules”*. Paragraph 1.6 of the Code says that all children with an EHCP that names the school must be admitted, no condition regarding residence or other qualifying requirement is permitted. When I raised this matter with the school it agreed to remove the restriction of residence in Buckinghamshire.

Looked after and previously looked after children

39. Paragraph 1.7 of the Code says *“All schools **must** have oversubscription criteria for each ‘relevant age group’ and the highest priority **must** be given, unless otherwise provided in this Code, to looked after children and all previously looked after children.”* The other provision in the Code is in paragraph 1.19 which says *“Where arrangements for pupils are wholly based on selection by reference to ability and provide for only those pupils who score highest in any selection test to be admitted, no priority needs to be given to looked after children or previously looked after children.”* Although this school is a designated grammar school, it does not provide only for those pupils who score highest on the test to have priority. By this I mean that, for example, a child scoring 140 in the test has no greater priority than a child scoring 121 because of that higher score. For any child who has scored 121 or more the chances of a place depend upon factors which are not related to their score. Because the school takes this approach (and I should make clear that is entirely legitimate for it to do so) it is required to give highest priority for looked after and previously looked after children who reach the relevant standard wherever they live.

40. The score in the test at which children normally become eligible for admission, and subject to the oversubscription criteria is 121. The first oversubscription criterion, as it is required to do by the Code, gives priority to looked after, or previously looked after children who have qualified for the school, that is have scored of 121 or more in the selection test. The second criterion reads *“12 Boys eligible for Pupil Premium (P.P.) or Service Premium*

(S.P.) who have scored a mark of 115-120 and above in the Admissions Test and who reside in the Catchment Area.”

41. Looked after children and previously looked after children are eligible for the pupil premium. A looked after, or previously looked after child who scores above 121 will have been admitted under the first oversubscription criterion. There could be looked after or previously looked after children scoring between 115 and 120 and some of these may not live in the catchment area. In my view paragraph 1.7 of the Code requires those children to have highest priority within the second criterion, no matter where they live or how many there are.

42. When I raised this matter with the school it said it was *“more than happy to adjust the score mark for criteria [sic] 1 to match that of criteria [sic] 2”*.

The terms catchment area and priority area

43. Oversubscription criteria 2 and 3 in the arrangements use the term *“catchment area”*, while criteria 7 and 8 use the term *“priority area”*. The map sent to me with the arrangements shows two areas labelled as *“catchment area”*. Paragraph 14 of the Code, quoted above, requires that admission arrangements are clear. When I raised my concerns about the clarity of these terms with the school it acknowledged the potential misunderstanding that could arise and proposed to clarify that the *“catchment area”* consists of two *“priority areas”* and provided a map to show this.

Waiting lists

44. Under the heading *“2.2 Waiting List”* the arrangements say *“If any vacancies arise after National Offer Day (1st March or the first working day after this date if it falls on a weekend) first priority will be given to those on the waiting list managed by BCC through the County Scheme. A waiting list will be maintained until 31 December 2020 by BCC for admissions into Year 7 during the academic year.”* The process after 1 January 2020 is then described.

45. Paragraph 2.14 of the Code says *“Each admission authority **must** maintain a clear, fair and objective waiting list until at least **31 December** of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria.”*

46. When I raised this matter with the school, it said that section 2.2 of the arrangements *“includes setting out that the list will be maintained until 31st December 2020 and that the oversubscription criteria will be used to allocate places, not the date that the pupil joined the waiting list”*.

47. The arrangements do say that oversubscription criteria will be used to allocate places from the waiting list, but only in the section which describes how the school manages the waiting list after 1 January. The requirements of paragraph 2.14 of the Code apply to the period before 31 December and set out what the admission authority must

state in its arrangements. Reference to the waiting list being managed by “*BCC through the County Scheme*” does not meet those requirements.

Admission outside of the normal age group

48. Paragraph 2.17 of the Code says “*Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.*” There is a section in the arrangements with this heading which describes how decisions on applications for admission outside of the normal age group will be made and the information that will be taken into account. This does not, however, say what the process is for making such a request, or when it should be made, and the Code requires that the process must be made clear, for example by explaining that a parent would need to contact the school.

Summary of Findings

49. For the reasons set out above I find that the catchment area is reasonable and does not create any unfairness to any group of children. I find that the arrangements do not meet the requirements of the Code in the six other ways set out above.

Determination

50. 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 2020 determined by John Hampden Grammar School for John Hampden Grammar School, Buckinghamshire.

51. 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.

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

Dated: 17 July 2019

Signed:

Schools Adjudicator: Phil Whiffing