



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3598

Objector: A member of the public

Admission authority: Nottinghamshire County Council for community and voluntary controlled primary schools in Nottinghamshire.

Date of decision: 27 August 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 Nottinghamshire County Council for community and voluntary controlled primary schools in Nottinghamshire.

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 community and voluntary controlled primary schools in Nottinghamshire for September 2020. The objection relates to the extent of the priority given to siblings of children at a school in cases where the first child was allocated a place at a school not their catchment area school because the catchment area school was full.
2. Nottinghamshire County Council (the LA) is the admission authority for community and voluntary controlled primary schools in Nottinghamshire. The LA and the objector are the parties to the objection.

Jurisdiction

3. These arrangements were determined under section 88C of the Act by the LA. The objector submitted her objection to these determined arrangements on 13 May 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. a copy of the minutes of the meeting of the LA at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 13 May 2019 and supporting documents subsequently provided;
- d. the LA's response to the objection and supporting documents;
- e. details of the consultation on the arrangements and the responses received; and
- f. two previous determinations of an adjudicator relating to schools in Nottinghamshire, namely ADA3202 et al. (High Oakham Primary School, issued in January 2017) and ADA3399 et al. (Abbey Road Primary School, issued in September 2018).

The Objection

6. The LA has altered its admission arrangements to give a higher priority to siblings living outside the catchment area of a school if the first child (elder sibling) had been refused a place at their catchment area school (the child who is given such higher priority is referred to as a "displaced sibling"). The definition of a displaced sibling is limited to siblings of those who applied for a place in the reception year (YR) at their catchment area school in the normal admissions round. It does not include younger siblings of children refused a place at their catchment area school where the older child was admitted to the out of catchment area school as a result of an in-year application even in cases where the catchment area school was full and refused them a place.

7. The objector says that this limitation to the definition of a displaced sibling is "*unfair*." She does not make reference to specific sections of the Code, but paragraph 14 of the

Code states that “admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair.”

8. In the course of correspondence, the objector also provided evidence that she believes shows that the definition of displaced sibling may breach paragraph 1.8 of the Code, which says that,

*“Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group.”*

Background

9. The LA is the admission authority for all community and voluntary controlled primary schools in the county of Nottinghamshire outside the city of Nottingham, which is a separate local authority. Each of these schools has a designated catchment area that is used to give priority to applications when a school is oversubscribed. The admission arrangements are common to all of these schools, other than a group of voluntary controlled schools designated with a Church of England character at which some priority is also given on the grounds of faith.

10. Following a period of consultation, the LA determined the arrangements for community and voluntary controlled primary schools for September 2020, which included a new, specific priority for displaced siblings. The oversubscription criteria are summarised below. Criteria relating to faith at some of the voluntary controlled schools have been omitted, as they are not germane to the objection or my consideration of it. I have given the definition of displaced siblings in the second criterion in full, in italics as it appears in the arrangements.

- (i) Looked after children and previously looked after children.
- (ii) Children who live in the catchment area and have a brother or sister attending the school or the linked junior/primary school **and** *children who do not live in the catchment area at the closing date for application and who, at the time of admission will have a brother or sister attending the school or the linked junior/primary school who was displaced as their Nottinghamshire community catchment area school was oversubscribed at the national offer day for first admission to school.*
- (iii) Other children who live in the catchment area.
- (iv) Children who live outside the catchment area and have a brother or sister attending the school or the linked junior/primary school.
- (v) Children who live outside the catchment area.

Within each criterion, priority is given to children on the basis of distance from the school.

11. The LA introduced the additional priority for displaced siblings following a determination of the adjudicator relating to Abbey Road Primary School (ADA3399). Abbey Road School is located in West Bridgford in Nottinghamshire, where there are four community primary schools. For a number of years, it had not been possible for every child living in the catchment areas of one or more of these schools to be allocated a place at their catchment area school for YR. As a result, some children were allocated places at other schools, which were of course not their catchment area schools. Before the displaced sibling priority was added, when an application was made for a younger child to join their older sibling “displaced” in this way, the younger child had priority under the fourth oversubscription criterion above, as they were not a sibling of a pupil living in the catchment area and did not themselves live in the catchment area. This meant that the younger child might not be allocated a place at the same school as their elder sibling, if children living in the catchment area filled all of the places, thereby doubly disadvantaging the family.

12. A group of parents objected to the arrangements of Abbey Road School. The adjudicator upheld the objection, on the grounds that the “oversubscription criteria fail to be reasonable” as they did not recognise “the greater need of a younger child who has a “displaced” older sibling.” In response, the LA immediately introduced the displaced sibling priority into the arrangements of Abbey Road School, as the adjudicator’s determination had found the previous arrangements did not conform with the Code. For admission in September 2020, it consulted on two alternative options: either to introduce the displaced sibling priority to the other three community schools in West Bridgford or to introduce the priority to all community and voluntary controlled schools for which it is the admission authority. There was not a large response to the consultation, but just over half of the 27 responses were in favour of introducing the displaced sibling priority, as worded above, into the arrangements of all community and voluntary controlled schools. The LA’s Children and Young People’s Committee determined the revised arrangements on 11 February 2019.

Consideration of Case

13. The objector does not take issue with the introduction of the displaced siblings priority to all community and voluntary controlled schools in the LA area. Her objection is that the definition is too restricted. She argues that the priority for displaced siblings should not just apply to those whose elder siblings were unable to obtain a place at their catchment area school in normal admission round, but should also include younger siblings of those refused a place at their catchment school, having made an in-year application. She says that the restriction,

“...is unfair as in both cases as the first child is at an out catchment school not as a matter of choice but purely because they could not be accommodated at their catchment school.”

14. In subsequent correspondence, the objector makes reference to a determination of the adjudicator relating to High Oakham Primary School (ADA3202). This school is a community primary school in Nottinghamshire. A number of parents objected to its

admission arrangements, which were the generic arrangements for all community and voluntary controlled schools in the LA area, arguing that there should be priority for siblings who live outside the catchment area. At that time, all applicants living outside the catchment area were prioritised solely on the basis of their distance from the school.

15. The objector draws attention specific attention to the following remarks of the adjudicator concerning the difficulties caused to parents who have siblings in different schools:

“Having children at more than one primary school, even if these are geographically not distant from each other, must cause disruption and expense that would otherwise be unnecessary, and is also very likely to impact on the lives of all concerned including the children themselves especially for this age group. If this is brought about without adequate reason, my view is that unfairness has resulted.”

The adjudicator upheld the objection. Subsequently, the LA introduced what is now the fourth oversubscription criterion above to its arrangements for all community and voluntary controlled primary schools.

16. The objector also quotes from the determination of the adjudicator in ADA3399, as follows:

“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.”

The objector’s contention is that the adjudicator made no distinction between children who had been unable to obtain a place at their catchment area school in the normal round of admission and those who did not obtain such a place following an in-year application. The definition of sibling in admission arrangements for Nottinghamshire community and voluntary controlled schools had not previously made such a distinction. The objector criticises the LA’s definition of “displaced sibling”, saying, *“I do not believe this was the interpretation of the term by the adjudicator”* [in ADA3399]. She concludes,

“in essence...there are two criterion [sic] in use, in that the new (fair) criteria [sic] is applied where the elder sibling was processed within the initial application round yet the previous (unfair) criteria is applied where the elder sibling was processed outside the normal application round.”

17. The objector also refers to a comment of the adjudicator in ADA3202:

“those less well-off are more likely to occupy rented accommodation than those who can afford to buy their homes, and that this seems to introduce the possibility of more frequent changes of address.”

She submits press articles that suggest that there is *“likely to be a reduction of rental properties (due to recent changes in tax benefits to landlords) which is likely to increase the potential of forced house moves for those in rental properties”* She says there are more low income families in rental properties compared to higher income families and provides government statistics showing that there is a *“greater proportion of ethnic minority families in the lower income bracket.”* This information, she believes, provides evidence that *“there could potentially be a breach of para. 1.8 of the Code,”* which is quoted above. She forwarded a copy of the council’s Equality Impact Assessment, which, she says, *“suggests any specific consideration of undue impact on poorer families was not part of this assessment process.”*

18. In response, the LA does not directly address the objector’s arguments relating to fairness. Rather, it explains that, in respect of in-year applications, children can be admitted as exceptions to the infant class size limit if there is no other available school within a reasonable distance (this provision is found in paragraph 2.15 (e) of the Code). This, it says,

“can result in children being admitted, as an infant class size exception, to their catchment area or preferred school over the determined admission number, subsequently any future child would be given priority as a sibling.”

It also mentions that the fair access protocol is *“triggered”* to ensure that unplaced children are allocated a school place quickly.

19. According to the LA, there is a range of reasons why parents may make an in-year application, including *“a move of house or parents’ dissatisfaction with the current school.”* It draws a distinction between the normal admission round when *“it is clearer how many places are available in the relevant age group”* and in-year applications when *“all available places could have been allocated as part of the normal admissions process (coordination) and admission authorities are not permitted to reserve places.”* In conclusion, the LA says that it considers that its arrangements are *“are reasonable, clear, objective [and] procedurally fair.”*

20. I asked the LA to let me know how many children had not been allocated their catchment area school in recent years in the normal admission round, when that had been their parents’ preference. On national offer day, the number varied between 70 (in 2015) and 13 (in 2019). However, these figures dropped markedly as places were later able to offered from waiting lists and some parents were successful at appeal. In addition, parents of significant numbers of children (as many as 37 in 2015) who had not been allocated places at their catchment area school accepted places at schools for which the LA is not the admission authority, for example, academies or voluntary aided schools. The displaced siblings priority only applies, of course, at community and voluntary controlled schools. In

fact, the LA's figures show that total of children who could not be allocated a place at their catchment area school and were subsequently allocated a place at another community or voluntary controlled school did not exceed seven in any of the last six years. Some of these children may not have younger siblings. The LA was unable to provide me with a similar analysis for children unable to be allocated a place at their catchment area school as a result of an in-year application.

21. What is clear is that the displaced sibling priority that the LA has introduced will potentially benefit only a very small number of children. The introduction of this priority was necessary because of the adjudicator's determination in ADA3399 that related to a particular issue in West Bridgford where, as noted above, for several years, it had not been possible to allocate all children to their catchment area school. The LA is responsible for planning the provision of sufficient school places in its area and for defining the catchment areas of community and voluntary controlled schools. It is very unfortunate that in respect of West Bridgford the LA had not avoided a situation in which children were placed in schools for which they did not live in the catchment area, against their parents' wishes.

22. By contrast, the reason why parents are unable to obtain a place at their catchment area school when making an in-year application for their children is generally not a result of a school place planning issue. As the LA says, admission authorities are required to allocate all the places (up to the Planned Admission Number (PAN)) at a school in the normal year of admission if there are preferences expressed for them. This is made clear in paragraph 15 (d) of the Code. In popular schools, in particular, some of the places may be taken by children living outside the catchment area, if there are fewer children than the PAN living in the catchment area who require places. The number of places available in schools across the country is more than the number of children who need places and it is highly likely that many more schools that have admitted up to their PAN do so because they are popular rather than because they cannot accommodate all of the children in their catchment area.

23. I consider, therefore, that there is a valid distinction to be drawn between children who are displaced from attending their catchment area school in the normal round of admission and those who are displaced as a result of an in-year admission. Put bluntly, the former group are displaced because the LA has not got its planning of school places quite right; the latter group are often displaced because all admission authorities are required to admit up to the PAN of the school if there are children who wish to attend the school concerned. As the LA points out, admission authorities are not allowed to "reserve places" in case these might be wanted in future by children who live in the catchment area. Following the adjudicator's determination in ADA3399, the LA has amended its arrangements to mitigate the effect of displacement for the former group, by introducing the displaced siblings priority. It does not feel that it is necessary to extend that mitigation to the latter group.

24. I recognise, though, that whilst the *causes* of the problem of children not being able to attend their catchment area school differ between normal round and in-year admission,

the potential *effects* on younger siblings are the same. Without the displaced sibling priority, there is a risk that siblings will not be able to attend the same school, creating what the adjudicator described in ADA3202 as “*disruption and expense*” that is likely to impact on the family as a whole. I doubt that many parents will be particularly concerned as to how the problem has arisen; they will simply want their children to attend the same school.

25. The LA suggests that the use of exceptions to the infant class size limit and the fair access protocol can help reduce the occurrence of children being placed in a school outside their catchment area as a result of an in-year application. Paragraph 2.15 (e) of the Code sets out the scope of the relevant exception to the infant class size limit as follows:

“children who move into the area outside the normal admission round for whom there is no other available school within reasonable distance.”

The LA says that it considers all in-year applications to determine whether this exception applies and would allow a child to be allocated a place at their catchment area school when it is full. “*Reasonable distance*” is not defined in the Infant Class Size Regulations. The objector’s concern, which I recognise, is that if an alternative school is only a short distance away, the exception does not apply and the applicant will be placed at an out of catchment school. The difficulties families experience by having siblings in different primary schools may be alleviated a little if the schools are located only a short distance apart, but they are certainly not removed entirely. Similarly, as paragraph 3.10 of the Code makes clear, the fair access protocol (which allows unplaced children to be allocated to schools ahead of those on the waiting list) is only triggered when a child “*has not secured a school place under in-year admission procedures.*” If an alternative school place to the catchment area school is available, an in-year applicant will not benefit from the fair access protocol.

26. Therefore, whilst I accept that there will be circumstances when the infant class size exception or the fair access protocol might apply to in-year applicants, I do not consider that they completely remove the possibility of children being placed in a non-catchment area school outside the normal admission round. Indeed, the LA does not claim this to be the case. It seems likely, therefore, that there will be some children each year in Nottinghamshire who have to be allocated an out of catchment primary school following an in-year application.

27. The LA is unable to tell me how many displaced siblings would benefit if the definition were extended to cover in-year admissions. The objector has not provided any specific examples of where difficulties have occurred for younger siblings whose elder sibling was placed at an out of catchment school. I consider it would be unwise to speculate as to what the figure for this group of displaced children would be, although it appears to me likely that if a school is undersubscribed when an in-year application is made, there is a very good chance that a subsequent application in the normal admission round in respect of a younger sibling will be successful, especially as that sibling will be prioritised under the fourth oversubscription criterion ahead of children living out of the catchment area who do not have a sibling at the school.

28. I note too that, as the LA says, the reasons why parents make in-year applications for a place at a school vary. Often a move of house is involved. Sometimes parents have simply decided that a change of school would be beneficial for their child; this could conceivably involve seeking a transfer from an out of catchment school that was preferred by the parent in the normal admission round to their catchment area school. It is unclear to me whether there is any logic in the latter circumstances for an unsuccessful in-year application to activate a displaced sibling priority for a younger sibling if the elder child is then placed at a different out of catchment school or indeed remains at the same school. I also consider that there is the possibility of unintended consequences if the displaced sibling priority were to extend to all in-year applications. One respondent to the LA's consultation on introducing the priority to siblings of children displaced in the normal admission round made the following point:

“The problem with this is that catchment first born children are then displaced by non-catchment siblings [of the displaced child] and this perpetuates as they then end up in a non catchment school.”

Whilst I have suggested in the previous paragraph that I do not consider this to be likely to be a common scenario where the elder sibling is displaced following an in-year application, it is not inconceivable. It is possible that in areas of high mobility or where new housing or other demographic changes sharply increase the number of children living in the catchment area that an extended priority for displaced siblings might mean that not all children in the catchment area can be offered places at the catchment area school.

29. The introduction in Nottinghamshire's admission arrangements of the priority for siblings of children displaced from their catchment area school in the normal admission round was precipitated by a particular issue in West Bridgford and followed an adjudicator's determination and subsequent consultation. The problems that families may face when making an in-year application to their catchment area school that has already reached its PAN can occur throughout the country. I have not undertaken an exhaustive analysis and of course some LAs do not use catchment areas at all but rather approaches based on distance or nearest school. However, I am aware of two other LAs in England that include a displaced sibling priority in their admission arrangements for the schools for which they are the admission authority. One of these, Hampshire, uses the same restriction that the priority only applies to siblings of children unable to be placed at their catchment area school in the normal admission round. The other, Portsmouth, does not appear to restrict the definition of displaced sibling in this way.

30. Having considered all of the above factors very carefully, I have come to the conclusion that the interests of fairness and reasonableness do not require the LA to extend the displaced sibling priority to the younger siblings of those unable to obtain a place at their catchment area school as a result of an in-year application. I appreciate that there may well be some families that would benefit if the LA were to extend the definition of displaced siblings, and not to do so may continue to lead to very difficult outcomes, but I do not consider that the arrangements can be deemed to be unfair in not extending the definition

in the way the objector suggests. By introducing the displaced sibling priority in the normal admission round, the LA acted to address an unfairness that can be said to be of its own making, that is, when there are insufficient places to accommodate all children living in the catchment areas it created. I do not think that the LA can be held responsible, directly or indirectly, for any difficulties caused to in-year applicants by the operation of the requirements relating to admissions in the law and the Code.

31. I consider that the following reasons, though not decisive individually, add weight to my conclusion:

- (i) there are some measures, such as the infant class size exception, that may enable the LA offer a solution to the difficulties families face, in certain cases. In addition, the admission appeals process can sometimes provide a remedy, as the circumstances of individual children are reviewed;
- (ii) the scale of the problem for in-year applicants is unclear and may be very small indeed;
- (iii) a displaced sibling priority would not be appropriate in all of the circumstances that involve an in-year application;
- (iv) the introduction of the priority would not assist parents of children who accept a place at a school for which the LA is not the admission authority;
- (v) the blanket introduction of the priority may lead to unintended consequences for first born children living in the catchment area; and
- (vi) the displaced sibling priority is not widely used across the country.

32. As I have found that the arrangements are not unfair, it follows that they cannot be said to “*disadvantage unfairly*” a particular social or racial group. I do not dispute the objector’s contention that families that are less well-off and those from ethnic minorities are more likely to make in-year applications. However, I consider that it is the requirements relating to admissions, by which the LA must abide and which also have the major positive effect of maximising the satisfaction of parental preference, rather than the LA’s own arrangements, that lead (unintentionally, of course) to any disadvantage that may occur to some of these families.

Summary of Findings

33. For the reasons given in the previous three paragraphs, I do not uphold the objection.

Determination

34. 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 Nottinghamshire County Council for community and voluntary controlled primary schools in Nottinghamshire.

Dated: 27 August 2019

Signed:

Schools Adjudicator: Peter Goringe