



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3589

Objector: A parent

Admission authority: Surrey County Council for Stamford Green Primary School, Epsom

Date of decision: 9 October 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 Surrey County Council for Stamford Green Primary School, Epsom, Surrey.

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 parent (the objector) about the admission arrangements for September 2020 (the arrangements) for Stamford Green Primary School (the school), a community school for children aged 4 to 11. The objection is that the arrangements are not fair or reasonable because children living in a particular housing development do not receive offers of places at the school which is the nearest primary school to that development.
2. The local authority for the area in which the school is located is Surrey County Council (the local authority). The local authority is the admission authority for the school and

is a party to this objection. Other parties to the objection are the governing board of the school and the objector.

Jurisdiction

3. These arrangements were determined under section 88C of the Act by the local authority on 5 February 2019. The objector submitted his objection to these determined arrangements on 13 May 2019. As someone with parental responsibility for a child who will be the right age to join the school in September 2020, the objector has asked to have his identity kept from the other parties and has met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of his name and address to me. 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 13 May 2019, attached documents and subsequent emails;
- b) a copy of the determined arrangements;
- c) copies of the minutes of the meeting of the local authority at which the arrangements were determined;
- d) comments from the local authority on the objection and its responses to my other enquiries;
- e) six determinations by the Schools Adjudicator, ADA1234 to ADA1239 dated 16 July 2008; and
- f) maps of the area identifying relevant schools.

6. I have also taken into account a discussion with a representative of the local authority held on 23 September 2019 at the local authority's office (the meeting). This discussion concerned the matter which I am considering under section 88I of the Act.

The Objection

7. The objector said "*It has come to my attention that the admission arrangements for primary schools in north west Epsom are disadvantaging children and families living on the*

new West Park (Noble Park) housing development.” He continued to say “This objection is made on the grounds of the admission arrangements not being “fair” and the oversubscription criteria for our nearest school (Stamford Green Primary School) not being “reasonable” given: the inevitable displacement of children to schools excessive distances from their homes; the priority given to siblings of children who obtained places before the West Park housing development was built; and, the criteria in place for a neighbouring school (Southfield Park Primary School) which specifically addresses the same issue for another housing development, and further exacerbates the lack of available school places in the locality.” He requested that “a catchment area is created for Stamford Green Primary School to cover the West Park housing development”.

8. 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.”* I can consider whether the arrangements for the school are fair and reasonable. If I find that they are not, then the admission authority must revise them in order to address the unfairness and unreasonableness I have identified. However, I do not have the power to require any particular measures which the admission authority should take in revising its arrangements and it is for the admission authority to decide precisely how to revise its arrangements so that they conform with the law and Code.

Other Matters

9. When I considered the arrangements as a whole it appeared to me that the definition of *“nearest school”* may not be clear or objective and so may not conform with paragraph 14 of the Code quoted above.

Background

10. The school is situated to the west of Epsom, close to the common. The published admission number (PAN) for 2020 is 90 and the oversubscription criteria can be summarised as follows.

- i. Looked after and previously looked after children.
- ii. Children with exceptional social and medical needs.
- iii. Siblings of children attending the school.
- iv. Children for whom the school is their nearest school.
- v. Other children.

11. Within each of the oversubscription criteria, children living closest to the school (measured in a straight line) have priority with random allocation being used as a final tie breaker if necessary.

Consideration of Case

12. The objector said that *“there has been insufficient expansion of primary school provision in north west Epsom as hundreds of new homes have been built”*. He provided data taken from the local authority’s website to show that in 2018 and 2019 not all children for whom the school was their closest could be offered places. The same data showed that in 2018, 50 of the 90 places available were taken by siblings and in 2019 the figure was 42. In those two years, to be offered a place under the nearest school criterion a child falling within the category of a child for whom the school was the nearest would have had to live less than 0.792 or 1.208 kilometres respectively from the school. From ordnance survey maps I have ascertained that the West Park housing development which is the area of concern to the objector lies between one and 1.8 kilometres from the school.

13. The objector said that the next closest primary school to West Park, Southfield Park (also a community school, between 1.4 and two kilometres from the estate), had different admission arrangements to those in place for most primary schools in Surrey in that it had a catchment area. Priority is given to children who live in the catchment area ahead of children for whom the school is the nearest through the insertion of an additional oversubscription criterion between criteria (iii) and (iv) listed above. He provided a copy of a report to the local authority executive dated 4 November 2008 which set out the rationale for the creation of a catchment area for that school to address issues arising from a new housing development at that time. This report referred to determinations made by the Schools Adjudicator dated 16 July 2008.

14. The objector also identified three other primary schools just over two kilometres in a straight line from West Park. Two of these he said were over five kilometres by road from West Park and the other was a Catholic school where priority was given on the grounds of faith. The objector said this resulted in children being placed at schools as far as 6.6 kilometres away from West Park and this was *“an unacceptable situation impacting children and their parents’ working arrangements.”* He said that the arrangements were unfair and unreasonable *“given:*

- *the inevitable displacement of children to schools excessive distances from their homes*
- *the priority given to siblings of children who obtained places before the West Park housing development was built*
- *the greater distance to the next nearest school with any likely capacity*
- *the catchment area in place for a neighbouring school (Southfield Park Primary School) which specifically addresses the same issue for another housing*

development, and further exacerbates the lack of available school places in the locality”

15. In its response to the objection the local authority confirmed that Stamford Green is the nearest primary school to the West Park development. It provided data to show that for September 2019, ten children living on West Park were offered places at the school under the sibling criterion and eight on the basis of its being their nearest school. The local authority told me that on 16 April 2019, when primary school places were offered, only one child for whom the school was their nearest was not offered a place and this child lived on West Park. This child has been offered a place at alternative schools, including one listed as a preference on the common application form. The local authority said that it expected a similar pattern of admissions in September 2020.

16. The local authority referred to the places offered to siblings. In 2019, 31 of the 42 siblings were children for whom the school was their nearest. The local authority said that the other 11 were a legacy from years when children living farther away were able to be offered places and that it was committed to supporting families through giving priority to siblings.

17. The local authority drew my attention to Danetree Primary School which it said was 2.25 miles (3.6 kilometres) from West Park by road. This school was enlarged in 2016 to “*ensure there would be sufficient school places in this area*”. The local authority said that in all years since then, any child living on West Park could have been offered a place at Danetree Primary school, if they had applied for one.

18. I have noted the objector’s commentary on the local authority’s response to his objection. Firstly, he considers it would not be fair if a different conclusion was reached in this case to that reached eleven years ago for the neighbouring school and a catchment area was not set. Determinations by the Schools Adjudicator do not set precedents and circumstances in each case are different. Having read the determinations written in 2008, I have concluded that the distribution of housing and school places is different, the Code is different and the pattern of parental preferences will be different and so the findings in those determinations are not in my view relevant to this case.

19. The objector also said that there could be “*a bigger impact*” in future years than in 2019 and that “*if the admission arrangement unfairly impacts even one family, then it is unfair.*” The objector said “*Fairness is by definition a relative issue which requires consideration of the comparative position of other children and families.*” This is the nub of the argument. Although parents may prefer it, a child does not have the entitlement to attend their nearest school, nor does every school have the capacity to accommodate all children for whom it is the nearest. In reaching a decision on this case I must consider the consequences for a child living on West Park of not being able to attend the school and the consequences for the child who would not be offered a place at the school if the West Park child was. I note that in order to gain a place ahead of a child living on West Park, a child (with the relatively rare exceptions of looked after and previously looked after children and those with medical and social needs) a child would have to have a sibling at the school

and/or have the school as his or her nearest school and live closer to it than the unsuccessful West Park resident applicant.

20. The Department for Education database 'Get Information About Schools' lists 16 other state-funded primary schools within a two mile (3.2 kilometre) radius of the school's postcode and 12 within two miles of the objector's home postcode. This includes a range of different types of school, some within Surrey and some within the neighbouring local authority area of Kingston upon Thames. Some of these schools may require longer journeys to reach due to the layout of the roads but overall I consider the area to be well provided with primary schools. Among these schools is Danetree Primary school which has recently been expanded in order to meet the need for places in the area. The local authority say that places at Danetree would have been available in recent years for children living in West Park if that school had been included by parents as a preference.

21. While it may have been preferred by residents of West Park that a closer school had been expanded to meet growing need in north-west Epsom, it may not have been physically possible to expand other schools. A school 2.25 miles from West Park is not in my view an unreasonable alternative if the nearest school does not have the capacity to admit all children for whom it is their closest. At that distance children up to the age of eight would qualify for free home to school transport. While not directly relevant to my consideration, I note that both schools are currently judged by Ofsted as 'outstanding'.

22. The fourth oversubscription criterion, children for whom the school is their nearest, defines a polygonal geographical area, residence within which gives a child priority for a place at the school. This meets the definition of a catchment area given on page 39 of the Code: *"A geographical area, from which children may be afforded priority for admission to a particular school."*

23. There are other ways that a catchment area could be drawn, taking into account other factors such as ease of access to both the school and alternative schools. For this school the local authority has not taken any factors into account apart from the proximity of neighbouring schools. From what the local authority has told me, the number of children living in this polygonal catchment area who could not be offered places in recent years has been very small.

24. It would be possible for the local authority to set a catchment area for the school smaller than the current polygonal shape by removing from it an area which was closer to other schools than West Park. While this would lead to children from West Park having a greater chance of a place at a school, it would necessarily lower the chance of other children being offered a place at their nearest school.

25. That would not be end of the story. If part of the current catchment area was removed from the polygon, then unless the catchment area for another school was increased to include that area, children living there may find that they may have low priority for all local schools because they did not now live in any catchment area at all. The local authority may not be the admission authority for the other school, so would not be able to

adjust the other school's catchment area to compensate. These children would now have to be considered against the fifth oversubscription criterion and may find they now have lower priority for Stamford Green than other children who never were in that school's catchment, but live closer to the school (although it is not their closest) than the area removed from the catchment. It may also be that another school did increase its catchment area and did not have the capacity to accommodate children from the larger area, thereby displacing the problem identified by the objector from one group of children to another.

26. Under the determined arrangements, a few children may not be able to go to Stamford Green as their nearest school; this will be disappointing to their parents. However, there is an alternative school which they could attend within what I consider to be an acceptable distance of their homes. The introduction of a different catchment area would have unknown consequences for an unknown number of children. In my view the balance of fairness currently lies with the *status quo* and so I do not uphold the objection. That said, should the number of children from the West Park area unable to be offered places at the school increase significantly, or the availability of alternative places for those children change, then the local authority would be wise to model and consult on alternative arrangements.

Other Matters

27. The fourth oversubscription criterion reads "*Children for whom the school is their nearest school*" I have noted above that this defines a polygonal catchment area for each community and voluntary controlled school and that the requirements of paragraph 14 of the Code must be met, specifically for arrangements to be clear and objective. Paragraph 1.14 of the Code is also engaged which says "*Catchment areas must be designed so that they are reasonable and clearly defined.*" Taken together this means that parents must be able to find out easily from the arrangements if they live in the polygonal catchment area for a given community or voluntary controlled school.

28. The oversubscription criterion refers parents to section 12 of the arrangements for a definition of "*nearest school*". Section 12 fills most of the ninth page of the arrangements. It begins "*For the normal intake to a school in 2020, the nearest school will be defined as the school closest to the home address with a published admission number for children of the appropriate age-range and which has admitted children without regard to faith or boarding in the initial allocation of places in 2016, 2017 and 2018.*" When I questioned the clarity of this statement with the local authority I was told that referring to schools with a published admission number excluded schools which are not state-funded. I was also told that it was necessary to refer to boarding because there is a state-funded boarding school in Surrey and this was a generic definition which applied to all age groups. It remained unclear to me how parents would know which schools met this definition from what is written in the arrangements up to this point.

29. I note that this definition as worded would mean that a faith school which admitted all children on the basis of faith in 2016 and 2017 but had space to admit one child on the

basis of a non-faith criterion in 2018 would be defined as a nearest school. I was not sure if this is what is intended and raised the question with the local authority at the meeting. I was told that to be considered as a possible nearest school, at least one child would have to have been admitted without reference to faith in all of the three years listed. This provision is not clear from the arrangements and so does not conform with the Code.

30. At the end of the first paragraph in section 12 it says “*Exceptions to this would be*

- *where a faith school has changed its admission arrangements and that change has meant that they would be expected to offer places to children who do not demonstrate a commitment to faith in future; and*
- *where a new school has opened or an existing school has opened a new phase of education since 2016 and that school does not admit all children with regard to faith; and*
- *some named out of County schools which would not have offered places to Surrey applicants in the initial allocation of places in 2016, 2017 and 2018 and where that school’s inclusion in the assessment of nearest school would lead to difficulty in identifying a school for a Surrey resident.”*

31. These exceptions add to the knowledge that a parent would need before they could work out which schools were taken into consideration when assessing if a community or voluntary controlled school was considered as the nearest school to their home. The following paragraph of the arrangements does provide some clarification because it refers to “*APPENDIX 3*” which is a list of primary and secondary schools not considered in the assessment of the nearest school. This lists 21 schools in Surrey with an intake into reception, one school in Surrey with an intake into Year 3, nine schools in Surrey with a Year 7 intake followed by four schools, both primary and secondary, situated in other local authorities and “*Any grammar school that offers places only on the basis of a selective test.*”

32. The local authority has suggested that an earlier reference to appendix 3 would help clarify the arrangements. I think it would be more helpful for parents to be told which schools were not considered as possible nearest schools and then to have the reasons for excluding those schools explained afterwards. However, parents still need to refer to a paper or online map not included in the arrangements and take measurements to identify if they lived in the polygon for which a particular community or voluntary controlled school was considered as the nearest school to their home. This may be difficult where a family lives close to the midpoint between two schools and does not have access to the sophisticated mapping information available to the local authority.

33. I also have two concerns with the clarity and objectivity of the bullet points listed above. The first relies upon anticipating the effect a change in admission arrangements may have in the future which cannot be objective. It is not clear how many children would need to be expected to be admitted without commitment to faith or for how many years. At the meeting I was told that this exception was for schools which had removed all faith-

based elements from their arrangements so that no children could be admitted on the basis of faith in future. If this is what is meant, then this is what the arrangements need to say.

34. Regarding the third bullet point, if a child resident in Surrey whose nearest school was in another local authority area applied for a place at that school, the local authority would know whether or not that child would have been offered a place through the scheme of co-ordination. It was not clear to me how the local authority would know whether or not an out of county school would have offered a place to a child for which it was the nearest school if no child living in Surrey had applied in one of the given years.

35. When I raised this matter with the local authority it said *“Each year, as part of the review of our admission arrangements for community and voluntary controlled schools, we review the intakes for the out of County schools immediately around the Surrey border and determine whether or not Surrey children might have gained a place had they applied. The number of schools of relevance is limited because, for the majority of Surrey children, their nearest school is in Surrey and so any out of County school that is further away would not influence which is considered to be their nearest school. It is therefore only the areas on the border of Surrey which have an out of County school that is nearer that we focus our attention on and, in these cases, it is generally only where the out of County school has some form of catchment which follows the County boundary that no Surrey children would be eligible for a place if they applied.”*

36. The use of phrases *“had they applied”* and *“if they applied”* in this response suggests to me that some of these schools may be excluded, and others included on the basis of assumptions. This contrasts with the exclusion of schools in Surrey which is on the basis of historical data. The use of the term *“eligible”* also concerns me. With limited exceptions (for grammar schools and single sex schools, all children are eligible for consideration for a place at any school which caters for their age, some children however have higher priority than others for the available places, which could be on the grounds of a sibling link, pupil premium or other factors, not just residence in a catchment area.

37. My second concern with the third bullet point was the phrase *“difficulty in identifying a school for a Surrey resident”*. The word *“difficulty”* could mean different things to different people. When I asked the local authority what this meant it said that the phrase *“is there to clarify the parameters within which this bullet is applied. There may well be other out of County schools that are considered to be ‘nearest’ that Surrey children may not gain entry to but where another local school would still be available as part of the initial allocation. However this wording provides for only some schools to be disregarded and caters for those areas where we might have difficulty placing a Surrey child in an alternative school if an out of County school was deemed to be their nearest but was unable to offer.”*

38. The reasons behind these arguments are understandable; however, this response avoids giving a meaning to the term difficulty. Does it mean identifying a place at a school within, say, three miles of the child’s home, within a stated travelling time or something else? As it stands the term is open to interpretation and is not objective.

39. Appendix 3 itself raises a further concern with the clarity of the definition of nearest school when it refers to “*Any grammar school that offers places only on the basis of a selective test.*” The exclusion of grammar schools from consideration is not mentioned in section 12 alongside the other reasons for excluding schools, some selective grammar schools offer places on the basis of a selective test and other factors such as where a child lives or eligibility for a pupil premium. These grammar schools would not be covered by this exclusion as it is worded. At the meeting it was explained to me that this exclusion was intended to apply to all selective schools, a number of which are found in other local authorities close to the county border.

40. Having identified the potential nearest schools the parent is faced with the following explanation of where measurements are taken. “*When assessing which school is nearest, distances to Surrey schools will be measured in a straight line from the address point of the child’s home address, as set by Ordnance Survey, to the nearest point within each school which is used to measure distance for the purpose of prioritising admissions, as set out in each school’s admission arrangements. Where a Surrey school does not use distance to prioritise admissions, the measuring point will be the nearest official school gate for pupils to use. Distances to schools outside of Surrey will be calculated using the postal address coordinates for the school.*”

41. Not many parents will know the Ordnance Survey address point for their home from which to measure let alone postal address co-ordinates for schools outside of Surrey. Paragraph 1.13 requires admission authorities to make clear the point within the school from which distance will be measured. Parents are therefore required to look through the admission arrangements for several schools to find the point to measure from. For community and voluntary controlled schools this is “*the nearest official school gate for pupils to use*”. This is stated in the fifth oversubscription criterion for “*Any other children*” and in section 14 concerning the tie breaker, I question how parents would know which school gate is an official one. My own experience of trying to construct the polygonal catchment area for Stamford Green Primary School on an Ordnance Survey map in order to consider the objection convinced me that it is not possible to do so with absolute accuracy.

42. At the meeting I was told that there is an on-line tool on the local authority’s website into which parents can enter their address and find out the distance to schools. This, however, is not explained in the arrangements, nor is there a direct link in what are described as “*School admission booklets*” for primary schools covering different areas of the county. When I investigated this tool after the meeting I initially found that it took six mouse clicks to find it from the opening page of the website, only when I knew where to find it could I reduce this to four.

43. Admission authorities are required by paragraph 1.47 of the Code to publish their arrangements by 15 March each year. I was told at the meeting that the on-line maps were not up to date until September when paragraph 1.51 requires a composite prospectus to be published by the local authority.

44. I find that the definition of nearest school in the arrangements is not clear and the exclusion of some schools from consideration as nearest school is not objective. The arrangements do not conform with paragraph 14 of the Code, parents would not always easily understand which is their nearest school. In addition, as the polygonal areas fall within the definition of catchment areas as they are geographical areas residence within which confers priority for school places, they also need to meet the requirement of paragraph 1.14 to be clearly defined. At the moment, they are not.

45. At the meeting the local authority agreed that this aspect of the arrangements was not clear or objective and undertook to review and clarify it. In that discussion the local authority considered that it would be possible to achieve some clarification within the usual two month period which the Code sets in paragraph 3.1 for admission authorities to revise arrangements following an adjudication, but it may require longer to consult on more substantive changes. I think that it would be helpful for parents applying for primary school places in 2020 if as much clarification as possible was done before the deadline for applications and so set a period of two months for this to happen.

Summary of Findings

46. I do not uphold the objection because while it may not be possible for a small number of children living on West Park to be offered places at their nearest primary school there are a range of alternative schools available within a reasonable distance of their homes. Parents of these children may consider that it is unfair that they cannot go to their nearest school, however, if the arrangements were altered to give them greater priority for places, then other children would not be able to attend the school. It would also be the nearest school for these children and the alternative places for those children may not be as acceptable as the alternatives for West Park children leading to a greater unfairness. However, the local authority is advised to monitor the situation and if the number of children affected increases or the location of alternative places changes it should model and consult on different arrangements.

47. I find that the definition of nearest school in the arrangements is not clear or objective and so does not conform with paragraphs 14 and 1.14 of the Code.

Determination

48. 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 Surrey County Council for Stamford Green Primary School, Epsom, Surrey.

49. 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.

50. 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: 9 October 2019

Signed:

Schools Adjudicator: Phil Whiffing