



Office of
the Schools
Adjudicator

Determination

Case reference: VAR890

Admission authority: Northumberland County Council for Mowbray Primary School, Guide Post, Choppington

Date of decision: 21 October 2019

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by Northumberland County Council for Mowbray Primary School for September 2020.

I determine that the published admission number shall be reduced from 45 to 30.

I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with 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. Northumberland County Council has referred a proposal for a variation to the admission arrangements for September 2020 for Mowbray Primary School (the school), to the Office of the Schools Adjudicator. The school is a community school for children aged 3 to 11 in Guide Post, Choppington.
2. The proposed variation is to reduce the published admission number (PAN) from 45 to 30.

Jurisdiction

3. The referral was made to me in accordance with section 88E of the School Standards and Framework Act 1998 (the Act) which states that: *“where an admission authority (a) have in accordance with section 88C determined the admission arrangements which are to apply for a particular school year, but (b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined, the authority must [except in a case where the authority’s proposed variations fall within any description of variations prescribed for the purposes of this section] (a) refer their proposed variations to the adjudicator, and (b) notify the appropriate bodies of the proposed variations”*.

4. I am satisfied that the proposed variation is within my jurisdiction.

5. I am also satisfied that it is within my jurisdiction to consider the determined arrangements in accordance with my power under section 88I of the Act as they have come to my attention and determine whether or not they conform with the requirements relating to admissions and if not in what ways they do not so conform.

Procedure

6. In considering this matter I have had regard to all relevant legislation, and the School Admissions Code (the Code).

7. The documents I have considered in reaching my decision include:

- a. the referral from the local authority dated 18 September 2019 and supporting documents;
- b. the determined arrangements for 2020 and the proposed variation to those arrangements;
- c. evidence that the governing board for the school has been consulted;
- d. a map showing the location of the school and other relevant schools; and
- e. a copy of the email notifying the appropriate bodies about the proposed variation.

Consideration of the arrangements

8. When I considered the arrangements as a whole it appeared to me that they did not, or may not, conform with requirements for admission arrangements in the following ways.

- a. Paragraph 14 of the Code requires that admission arrangements are clear and paragraph 1.8 requires that oversubscription criteria are clear. The way in which the arrangements were structured appeared not be clear.

- b. The use of child benefit receipt to determine where a child lives in cases where parents do not live together may not be fair. Paragraph 14 of the Code requires that arrangements are fair.
- c. The definition of previously looked after children may not be clear.
- d. Catchment areas may not be clear.
- e. Dates stated in the arrangements about the requirements for school prospectuses may not be clear.

The proposed variation

9. The school is a community school for children aged 3 to 11. It has a PAN of 45. The local authority told me that *“The Council has received a number of requests from the headteacher over the past year raising concerns regarding the PAN of the school. The school has a PAN of 45 but has intakes below that figure for a number of years, with very reduced numbers in the last 3 years”*. It continued to describe the financial and planning difficulties which this caused the school.

10. Paragraph 3.6 of the Code requires that admission arrangements, once determined, may only be changed, that is varied, if there is a major change of circumstance or certain other limited and specified circumstances. I will consider below whether the variation requested will address the change in circumstances.

11. Paragraph 3.6 of the Code also requires that appropriate bodies be notified of a proposed variation. The local authority has provided me with a copy of its notification on the proposed variation and the list of schools and other bodies to which it was sent. I have seen confirmation from the school’s governing board that it supports the request for the variation. I am satisfied that all appropriate bodies have been notified and that views expressed have been taken into consideration. I find that the correct procedures were followed.

Consideration of proposed variation

12. The local authority told me *“The school is finding it increasingly difficult to plan and manage with the PAN set at 45, as its intake in more recent years has been well below the PAN and staffing levels have been set accordingly. When additional children are allocated to the school in-year because on paper there are place [sic], the school is finding it has to employ additional staff which have not been budgeted for. As a result, there is a negative financial impact on the school.”* I was told that the number of pre-school age children in the school’s catchment area had fallen and the local authority did not expect there to be more than 30 children needing places at the school in the foreseeable future and it said there was a similar pattern of falling rolls across the wider planning area.

13. The school wrote to me setting out with some more detail about the number of children at the school and its concerns about the possible need to appoint more teachers if slightly more than 30 children were admitted to the reception class in September 2020. I am not sure that the school has considered alternative ways of grouping children in its infant classes, mixing year groups as many schools do successfully, to stay within the bounds of legislation concerning infant class sizes. However, while there may be other ways of managing the situation, the proposal would address the issues described.

14. I was concerned that as the local authority has been receiving requests from the school for a lower PAN for some time it did not consult on a lower PAN and then determine one during the normal process of setting admission arrangements. This would have allowed wide consultation with the public and others on the proposal. It would also have allowed anyone concerned about such a change to make an objection to a reduced PAN. The variation process does not include these steps. The local authority told me that it decided to wait until there was more data available on the pattern of births in the area. This is not a convincing argument because the children due to start school in September 2020 would have been born between 1 September 2015 and 31 August 2016, so information on them would have been known before consultation on these arrangements in the autumn of 2018.

15. The number of first preferences for the school has not exceeded 30 in any of the last three years, nor has the number of places offered exceeded 30. I do not, therefore, think that this proposal risks adversely affecting the degree to which parental preference is met in the area. The local authority is also confident that there are enough reception class places in the area and it would fall to the local authority to provide any shortfall if this was not the case. I therefore approve the proposal.

Other Matters

16. Paragraph 14 of the School Admissions Code (the Code) requires that admission arrangements are clear and fair while paragraph 1.8 of the Code requires that oversubscription criteria are clear. The arrangements sent to the adjudicator begin with four and a half sides of detail about fraudulent applications, parental responsibility and other definitions before a parent can find the PAN for the schools they may be interested in and before the oversubscription criteria are found on Page 8 of the document. The section on parental responsibility is repeated later in the arrangements. I asked the local authority whether this was a clear way of setting out the arrangements.

17. In its response to me the local authority agreed to move information about PANs and oversubscription criteria to an earlier point in the document.

18. In the section about parental responsibility, child benefit is used to determine the responsible parent and the address to be used when determining priority for admission to a school in cases where parents do not live together. This may not be fair because it is possible for the child not to live during the school week with the parent who receives child benefit.

19. When I raised this concern with the local authority it said it noted my concern *“However, it is believed that this continues to be the preferred method of identifying the responsible person in Northumberland as there is concern that the use of Council Tax address may be more open to fraud in this authority given the number of cross-border areas around the county.”*

20. While the address at which the parent who receives child benefit lives is one useful way of determining where a child lives, it remains possible for a child to live elsewhere during the school week. There is no requirement that child benefit be paid to the parent with whom the child lives most of the time or with whom the child lives during the school week, term or year. The requirement is only that the child lives some of the time with the parent who receives the benefit. It is perfectly possible for child benefit to be paid to a parent with whom a child lives, say, only in the school holidays. In that situation, using the address of the parent who receives child benefit to assign priority for a school place would not in my view always be fair as it would not accurately reflect where a child actually lives. Moreover, some families may not claim child benefit. There are other ways of establishing where a child lives, such as through their general practitioner’s or pre-school records, and it should be possible for these to be taken into consideration. I find that relying solely on child benefit to determine a child’s address is unfair and the Code requires that this is changed.

21. The section on waiting lists in the arrangements did not appear to meet the requirements of paragraph 2.14 of the Code and the first oversubscription criterion did not define looked after or previously looked after children fully. The footnotes to paragraph 1.7 of the Code set out precisely which children meet this definition. When I raised these matters with the local authority it agreed to amend the arrangements accordingly.

22. The fourth oversubscription criterion refers to *“the greater catchment area of the school partnership.”* This term was not defined in the arrangements and so not clear. When I drew this to the attention of the local authority it agreed to provide a definition.

23. The fifth oversubscription criterion begins *“Children resident in the greater catchment area of the school partnership who are expected to be on roll at the school at the time of admission.”* This made no sense to me because the oversubscription criteria are applied to children not yet on roll at the school. The local authority told me that it believed that wording from another criterion had been included in this one in error and this would be removed.

24. On the final page of the arrangements it says *“Schools must make their own prospectus available to parents 6 weeks before the closing date for applications. This means that schools [sic] prospectuses should be available by 12 September 2019.”* It was not clear to me where this requirement is found in the School Information (England) Regulations 2008 or other legislation. The Code requires all admission authorities to publish their admission arrangements by 15 March in the determination year. The closing date for applications to primary schools is 15 January and so 12 September is not six weeks before this. I did not find this part of the arrangements to be clear. There are requirements about the information which the governing bodies of community and voluntary controlled schools

must publish on their websites in relation to admissions but the wording above does not accurately reflect those requirements and those requirements are in any case not part of the admission arrangements which are a matter for the local authority as the admission authority. When I raised this matter with the local authority it agreed to remove these words from the arrangements.

25. In replying to my enquiries the local authority asked when the required changes should be made to the arrangements, or whether they should be made to the arrangements for 2021. In my view it should be possible to address the matters I have raised above within the usual two month period specified in paragraph 3.1 of the Code and this period will end before the closing date for applications for primary school places for 2020. This will ensure that the arrangements are clear and that no unfairness would arise from a child being given priority for a school place based on an address at which they do not live during the school week.

Summary

26. For the reasons set out above I approve the proposed variation to the admission arrangements of the school.

27. I find that the admission arrangements do not conform with the Code in the ways set out above.

Determination

28. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by Northumberland County Council for Mowbray Primary School for September 2020.

29. I determine that the published admission number shall be reduced from 45 to 30.

30. I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the ways set out in this determination.

31. 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: 21 October 2019

Signed:

Schools Adjudicator: Phil Whiffing