



Determination

Case reference: ADA3756

Objector: A parent

Admission authority: The Rodillian Multi Academy Trust for BBG Academy

Date of decision: 6 May 2021

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 2022 determined by The Rodillian Multi Academy Trust for BBG Academy, Kirklees.

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 (the arrangements) for BBG Academy (the school), an academy school for boys and girls aged 11 to 16, for September 2022. The objection is to how distance from the school is used to prioritise children for places.
2. The local authority (the LA) for the area in which the school is located is Kirklees Council. The LA is a party to this objection. Other parties to the objection are The Rodillian Multi Academy Trust (the trust) and the objector.

Jurisdiction

3. The terms of the Academy agreement between the multi-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 by the academy trust, which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 2 March 2021. 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. a copy of the minutes of the meeting of the academy trust at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 2 March 2021 and accompanying statement;
- d. the school's response to the objection and subsequent correspondence;
- e. the local authority's response to the objection and my further enquiries;
- f. maps of the area identifying relevant schools and priority areas;
- g. maps showing the locations of children admitted to the school and refused a place;
- h. information on the LA's website showing the allocation of secondary school places for admission in September 2020 and 2021;
- i. school place planning data provided by the LA; and
- j. evidence of the consultation undertaken by the admission authority prior to the changes made to the arrangements for admission in September 2021 and the responses made to that consultation.

The Objection

6. The objector argues that the oversubscription criterion that prioritises children by their distance from the school is unfair. He says that a previous practice, which was in place up to and including admission in September 2020, “allowed for places to be spread equally across its priority area.” The effect of the current arrangements, he believes, is that one of the communities served by the school, Birstall, “will not get its fair share of places.”

7. It is a requirement of the Code, set out in paragraph 14, that “admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair.”

Other Matters

8. Priority is given to children of staff within the Rodillian Multi-Academy Trust (RMAT) or working at a RMAT school site. Paragraph 1.39 of the Code allows admission authorities to give priority to children of staff only “at the school” to which the oversubscription criteria apply. It is otherwise prohibited to give priority according to the occupational status of parents (paragraph 1.9 f).

9. The arrangements state that “Children with an Educational Healthcare (sic) Plan (EHCP) which names the Academy will be guaranteed a place, **if agreed at consultation**” (my emphasis). All children whose EHCP names the school must be admitted without conditions.

10. A note in the arrangements makes reference to “residence orders” in respect of previously looked after children. Residence orders were replaced by child arrangements orders in 2014. The oversubscription criteria correctly refer to child arrangements orders.

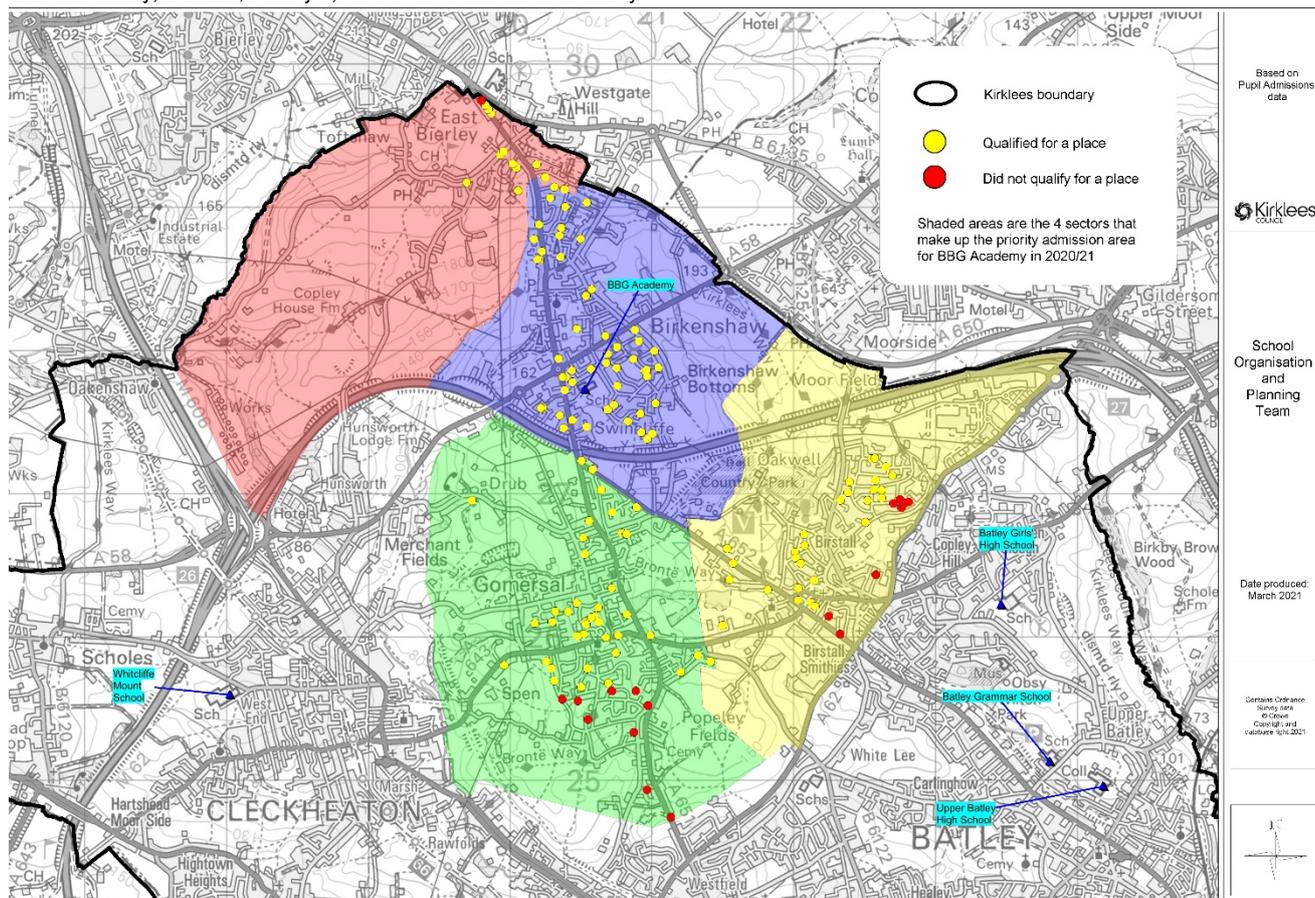
11. The arrangements make reference to the school’s approach to the education of children outside their normal age group but do not make clear the process for requesting admission out of the normal age group, as required by paragraph 2.17 of the Code.

Background

12. The school opened in 2012, replacing Birkenshaw Middle School. The school has a catchment area, known as its priority admission area (PAA), that encompasses East Bierley, Gomersal and most of Birstall, as well as Birkenshaw, where it is located. It has been oversubscribed for several years. For admission in September 2020 and, I understand, previous years, the arrangements provided first for the admission of looked after and previously looked after children and then for siblings of children attending the school. The remaining places were allocated across four geographical sectors, with 10 per cent of the places allocated to East Bierley and 30 per cent to each of the other three communities within the PAA, with priority within each sector given the children living nearest to the school. Map one shows the extent of the PAA and the four sectors that were used in the arrangements for admission in September 2020.

Map one: PAA, including four sectors, for admission to the school in September 2020

BBG Academy, 2020/21, Priority 3, allocations at National Offer Day



13. Following consultation, several significant alterations were made to the arrangements for admission in September 2021, including priorities based on aptitude and for children of staff. The use of the four sectors was discontinued. These arrangements were unchanged for admission in September 2022, apart from an increase in the Published Admission Number (PAN) from 200 to 210. The oversubscription criteria can be summarised as follows:

1. Looked after children and previously looked after children.
2. Children living in the school's PAA who demonstrate an aptitude for rugby or netball (up to 10 per cent of the PAN).
3. Children of staff who work within RMAT or at a RMAT school site.
4. Children who have a sibling attending the school.
5. Children who live within the school's PAA.
6. Children who do not live within the school's PAA.

Within criteria 4, 5 and 6, priority is given according to the distance the child lives from the school site. The tie breaker, where distances are equal, is the drawing of lots.

14. All of the school's PAA also lies within the catchment areas of other secondary schools. In general terms, East Bierley, Birkenshaw and Gomersal are in the PAA for Whitcliffe Mount School and Birstall is in the PAA for schools in Batley.

Consideration of Case

15. The objector believes that, in principle, the admission arrangements that were in place until September 2020, using four sectors within the PAA, were appropriate. He says,

“The previous year's policy allowed for places to be spread equally across its priority areas. This was the only way to do it fairly.”

According to the minutes of a board meeting, the trust's reason for removing the four sectors from the arrangements for admission in September 2021 was that,

“The original policy discriminated against students nearest to the Academy.”

The trust also explained that,

“Since the previous policy was put in place, significant additional family housing has been built in Birkenshaw. There is additional growth predicted which was part of the rationale to change the policy.”

In response to the consultation on this change, the LA commented,

“The proposed changes...will help simplify admission arrangements for parents.”

16. I understand the trust's reason for making the change was that the original arrangements could have had the effect of allocating places to children who lived further from the school than some who lived closer who were refused a place. For example, if the quota of 30 per cent were reached in Birkenshaw, some children in that community might be refused places, while children from Birstall, which is further away from the school, would also be allocated up to 30 per cent of places. Such a potential outcome would have been, of course, an inevitable consequence of the use of the four sectors. I infer from the objector's remarks that he regards this original policy as entirely fair.

17. In fact, map one shows that, for admission in September 2020, places were allocated under the distance criterion (then the third priority) to all applicants living in Birkenshaw who expressed a preference for the school (and did not have a higher preference that was met). These applicants are denoted by yellow spots. Applicants who were not allocated a place, denoted by red spots, lived principally in Gomersal and Birstall, and there was one unsuccessful applicant in East Bierley.

18. This pattern of allocations does not appear to bear out the trust's concerns about the effect of the use of the four sectors, as only applicants living on the fringes of the PAA, rather than those living nearest to the school, were not allocated places. The objector has stated his belief that the admission arrangements were not applied correctly. The trust suggests that

“The spot map produced may have also been effected [sic] by the number of siblings that applied in 2020.”

How this may be so is not immediately obvious, as the map only shows children allocated under what was the third oversubscription criterion. Siblings were allocated places under the second criterion.

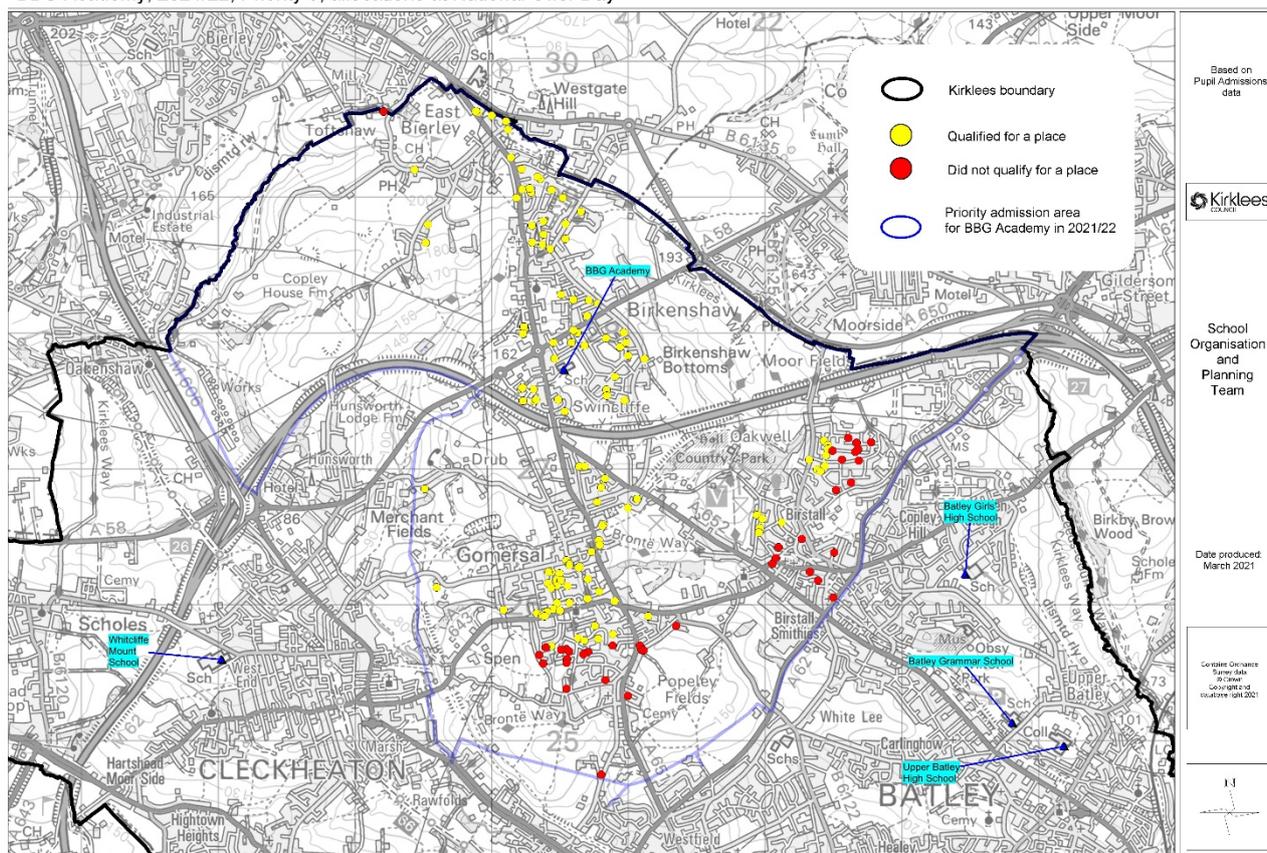
19. It is not within my jurisdiction to investigate the allocation of places for admission in September 2020 or indeed for any other year. I make the foregoing observations simply in order to explore the rationale provided by the trust for the approach in the arrangements for admission in September 2022 for giving priority, in the fifth criterion, only on the basis of distance from the school. Neither is it for me to compare the merits of the previous and current arrangements. My jurisdiction extends solely to considering whether the 2022 arrangements meet the Code’s requirement for fairness. It is to that consideration that I now turn.

20. BBG Academy is an oversubscribed school. There are insufficient places for it to accommodate all of the children who live in its catchment area. This difficulty is offset, to some extent, by the fact that the school’s PAA is superimposed upon the PAAs of other schools. In other words, all children living in BBG’s PAA also live in other schools’ PAAs. The trust has determined that, following the allocation of places to children under higher oversubscription criteria, priority will be given to children living in the PAA, based on their distance from the school. Distance from the school is mentioned in the Code as a potentially acceptable oversubscription criterion (paragraph 1:13). The trust uses a straight line measurement system that is common to all schools in Kirklees. Both the trust and the LA regard this as fair and therefore in line with the Code’s requirements.

21. It is likely that when a school is oversubscribed within its catchment area, the use of distance from the school will mean that children living towards the edges of the area may not be allocated places. Map two shows this to be the case at BBG Academy. The map shows the pattern of allocations under the distance criterion (now the fifth priority) for admission in September 2021, when distance from the school alone, rather than the four sectors approach, was used to allocate places for the first time.

Map two: Allocation of places under the distance criterion, for admission to the school in September 2021.

BBG Academy, 2021/22, Priority 5, allocations at National Offer Day



22. The application of the revised distance criterion produced a similar pattern for admission in September 2021 to that shown in map one. Again, it was children living in the parts of Gomersal and Birstall located furthest from the school who were not allocated places. Also, one child living in East Bierley did not obtain a place. The LA confirmed to me that all of the children living in the PAA of BBG who did not obtain a place there (the red spots) were allocated a place either at Whitcliffe Mount School or one of the three secondary schools in Batley.

23. The LA provided me with its forecasts of the number of pupils it expects to transfer from primary to secondary school in September 2022. These forecasts show that demand for places in year 7 will reach a peak in 2022. In the Batley, Birkenshaw, Birstall and Gomersal planning area an increase of 50 pupils transferring to secondary school is expected. The pattern of admissions is complicated as this area is adjacent to both the Bradford and Leeds local authority areas; considerable numbers of pupils cross LA borders to attend school. Nevertheless, the LA confirmed that,

“With a combination of additional bulge places for September 2022 and the priority given by local schools to local families in over subscription criteria, we expect there to be sufficient places available in this area.”

24. The information provided by the LA, therefore, suggests strongly that the pattern of admissions to the school will be broadly similar in September 2022 to that in the previous

year. If so, applicants living in Birkenshaw are likely to be allocated places, whereas significant numbers living in Gomersal and Birstall are not. The objector has provided figures showing that fewer children from Birstall than from Gomersal and Birkenshaw obtained places for admission in September 2021, which would not have been the case under the four sectors approach. It is this that he regards as unfair.

25. I have not been made aware that the trust has ever been under any duty, legal or otherwise, to adopt admission arrangements that ensure particular proportions of applicants are admitted from each of the communities located in its PAA. The funding agreement for the academy simply states that,

“the school provides education for pupils who are wholly or mainly drawn from the area in which the school is situated.”

The original arrangements adopted the four sectors approach in recognition of the likelihood that not all children living in the PAA whose parents expressed a preference for the school would be allocated places. The trust subsequently decided upon a change of policy, to a mechanism that is not inherently unfair, as the Code confirms. That children who live closer to a school should have a higher priority for a place than those who live further away has a straightforward and easily understood logic.

26. However, it is possible that the effect of such a distance criterion could be to produce unfairness in respect of certain groups of children. In particular, this might be the case if the effect of the criterion is that some children living in the PAA will face a significantly longer or more difficult journey to an alternative school, whereas children who are allocated places at the school have easier access to other schools.

27. Map two shows that this was not the case for the vast majority of children living in the PAA who did not obtain a place at the school for admission in September 2021. For nearly all of the children living in Gomersal in this position, Whitcliffe Mount School and BBG Academy are, in broad terms, the same distance away. Similarly, the Batley schools are, on the whole, no further from Birstall than BBG and, in the case of Batley Girls High School, considerably closer. This, coupled with the LA’s re-assurance about the availability of places for admission in September 2022, persuades me that the arrangements will not be unfair in their effect on children living in the areas collectively served by BBG and the schools whose PPA overlaps with that of BBG.

28. Therefore, I consider that the arrangements do not contravene the requirement of paragraph 14 of the Code relating to fairness. I do not uphold the objection.

Other Matters

29. The trust responded promptly when I drew attention to the other matters, listed in paragraphs 8 to 11 above. It undertook to alter the third oversubscription criterion to restrict priority to children of staff based at the school, to amend the out-of-date reference to “residence orders” and to include information in the arrangements about the process for requesting admission out of the normal age group. The trust explained that the reference to

consultation does not affect the guarantee of a place for children whose EHCP names the school. This is correct. In the interests of clarity, the words “if agreed at consultation” should be removed.

Summary of Findings

30. The school is oversubscribed from within its catchment area. It has adopted distance from the school to determine priority. Children living in Gomersal and Birstall not allocated places will not face a significantly longer journey to an alternative school. The arrangements are not unfair in their effect and do not contravene the Code. I do not uphold the objection. There are other matters that do not comply with the requirements relating to admissions.

Determination

31. 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 2022 determined by The Rodillian Multi Academy Trust for BBG Academy, Kirklees.

32. 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.

33. 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: 6 May 2021

Signed:



Schools Adjudicator: Peter Goringe