



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3779

Objector: A parent

Admission authority: Gordon's School Academy Trust for Gordon's School, Surrey

Date of decision: 10 June 2021

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2022 determined by Gordon's School Academy Trust for Gordon's School, 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 2022 (the arrangements) for Gordon's School (the school), an academy school for children aged 11 to 18. There are two parts to the objection. The first concerns the priority given to siblings of children at the school who live over 1500 metres from the school and the second is to the introduction of places for children on the basis of their aptitude for sport or the performing arts.
2. The local authority for the area in which the school is located is Surrey County Council. The local authority is a party to this objection. Other parties to the objection are the school and the objector.

Jurisdiction

3. The terms of the Academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools.
4. While the school was unable to provide me with a formal minute of a meeting at which the arrangements were determined, I was provided with the minutes of the meeting at which consultation on the arrangements was approved and copies of correspondence between governors including comments on the outcome of that consultation. After considering correspondence from the Clerk to the Governors I have decided that the arrangements sent to me have the approval of the governing board on behalf of the trust and are the determined arrangements for the school. In reaching this decision, I have borne in mind that COVID-19 restrictions made it difficult for governors to meet during the period when I would normally expect to see a formal record of consultation responses being discussed and the subsequent determination of admission arrangements.
5. The objector submitted her objection to these determined arrangements on 10 April 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.
6. There are several points of admission and types of places at the school. The objection concerns admission to day places in Year 7. In using my power under section 88I of the Act I have not considered the other categories or points of admission in this determination.

Procedure

7. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
8. The documents I have considered in reaching my decision include:
 - a. governing board papers through which the arrangements were determined;
 - b. a copy of the determined arrangements including the supplementary information form (SIF);
 - c. the objector's letter and form of objection received on 10 April 2021;
 - d. the school's response to the objection including responses to my enquiries and comments on the other matters which I raised;
 - e. the local authority's comments on the objection and the other matters; and
 - f. maps of the area identifying other schools.

The Objection

9. The first part of the objection concerned the level of priority given to siblings of children on roll when they lived more than 1500 metres from the school. The objector said this was “neither ‘fair’ nor ‘reasonable’ and therefore does not comply with paragraph 1.8 of the Code.”

10. The second part of the objection concerned the decision to offer 12 places in September 2022 on the basis of aptitude in sport or performing arts. The objector said this was neither fair nor reasonable because these children were given greater priority than both local children and siblings living more than 1500 metres from the school and thus this would reduce the number of places available for such children.

Other Matters

11. When I considered the arrangements, it appeared to me that they did not or, may not conform with the Code in other ways. Paragraph 14 of the Code requires that “the practices and criteria used to decide the allocation of school places are fair, clear and objective.” It was not clear to me from the arrangements how priority for the 12 aptitude places would be decided if they were oversubscribed. Furthermore, the description of the tests for aptitude did not appear to meet the requirements of paragraph 1.32a of the Code to be tests of aptitude and not ability.

12. Paragraph 2.4 of the Code sets out the requirements for SIFs. It appeared to me that the SIF used by the school may not meet those requirements.

Background

13. The school is situated in West End which is a village to the south of junction three of the M3 between Woking and Camberley. The school is clearly understandably proud of its long history and Royal patronage. It offers 120 places in Year 7 of which 32 are described as full and weekly boarding places and 88 are described as day boarding places. The school also admits children into Year 9 and Year 12. The school is oversubscribed.

14. The oversubscription criteria for the 88 day places in 2022 can be summarised as:

- a) Looked after and previously looked after children
- b) Children living within 1500 metres of the school who have a sibling at the school
- c) Children of staff employed at the school
- d) Up to 12 children with an aptitude for sport or the performing arts
- e) Children living within 1500 metres of the school
- f) Other children with siblings at the school

g) Other children.

15. The arrangements say within the wording for all criteria except (a) and (d) that priority is given to children living closest to the school (measured in a straight line). Elsewhere the arrangements explain that if it is necessary to decide between two or more children who live the same distance from the school there will be a lottery to decide which is offered a place.

Consideration of Case

Priority for siblings living over 1500 metres from the school

16. The objector considered the priority given to siblings who lived more than 1500 metres from the school to be unreasonable. She referred to paragraph 1.8 of the Code which says: “Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair ...” and said:

“My primary objections relate to the extremely low priority given to siblings of existing pupils who live greater than 1500m away from the school. Under the current Admissions Policy, there are no exceptions made for families where the younger sibling is applying from the same address as a sibling who is currently at the school. The School’s rationale for this policy is to prevent the ‘mischief’ of families moving into the local area for a short period to get their eldest child in before moving some distance away, and then relying on sibling priority to get younger siblings into the school.”

17. In its response to the objection the school also referred to issues experienced in the past when families moved close to the school so that their eldest child had high priority for a place and, once a place was secured, moved away knowing that any siblings would also have high priority in the future. This had led to the distance from which non-siblings were recruited from to become little more than 500 metres making it difficult for families living in much of West End to obtain places at their local school. The school explained that it had considered taking into account the time a family had lived at an address but was concerned that this could discriminate against families who had genuine reasons to move to a new address. After discussion with the local authority, it decided to introduce criteria based on a 1000 metre radius of the school in 2015 and at the same time the published admission number (PAN) was increased from 68 to 76 for day places.

18. The PAN was increased again in 2017 to 84 and in 2018 a number of additional children were placed at the school through the independent appeal process. The school was concerned that any younger siblings of these children would be unlikely to be offered a place as they lived outside the 1000 metre radius. This led to the extension of the radius from 1000 to 1500 metres for 2020. In 2021, the school offered 88 places to help meet increased demand in the area that year and this is the PAN set for 2022.

19. The objector referred to the oversubscription criteria which were in place in September 2017. She quoted these as:

- “(i) Those with siblings on the roll prior to 1 September 2015
- (ii) Those with siblings living within 1km of the school
- (iii) Children living within 1km (without siblings)
- (iv) Those with siblings living further than 1km from the school
- (v) Other children greater than 1km from the school.”

From the school’s response to my enquiries, these criteria, preceded by a criterion for looked after and previously looked after children, were in place until 2019. For 2020 and 2021, these criteria were changed to the following:

- (i) Looked after and previously looked after children
- (ii) Children with siblings on the roll prior to 1 September 2015
- (iii) Children living within 1500 metres of the school with siblings at the school
- (iv) Children of members of staff
- (v) Children living within 1500 metres of the school
- (vi) Other children with siblings at the school
- (vii) Other children

20. As listed previously, in the 2022 criteria the criterion for children with siblings on roll prior to September 2015 has been removed. This criterion would have been superfluous in 2022 as children on roll in 2015 would have left the school by 2022. A criterion for children with aptitude for sport or performing arts was added after that for children of staff and before children living within 1500 metres of the school.

21. The school said that families living beyond the 1000 metre and later 1500 metre radius would have been aware of the criteria and that it was possible that siblings may not be able to secure a place at the school. The local authority said that by increasing the radius from 1000 to 1500 metres families will not have been disadvantaged.

22. The 1000 and 1500 metre radii set geographical areas, from which children may be afforded priority for admission to a particular school. This is precisely the definition of a catchment area found in the Code. These areas must consequently conform with paragraph 1.14 of the Code to be clearly defined, and reasonable.

23. The definition of the catchment area is very clear, and I have constructed circles of radius 1000 and 1500 metres on an Ordnance Survey map. The 1000 metre circle, represented in purple on the map below, does not cover all the houses in West End; a significant number in the southeast of the village fall outside of it. That circle also includes a small number of houses at the extreme east of Lightwater. The 1500 metre circle,

represented in orange, encompasses the entire village of West End and a number of additional houses in the east of Lightwater.



24. Increasing the radius of the catchment area by 50 per cent increases the area by 125 per cent. While much of the additional area is farmland, woods and heathland, the two areas of additional housing added to the catchment area taken together appear on the map to cover an area not much smaller than the area occupied by housing in the 1000 metre circle.

25. The effect of this can be seen in figures provided by the school which show that in 2019 when the catchment area had a radius of 1000 metres, 48 children (siblings and others) were admitted on the basis of living within the catchment area. The figures show that the comparable numbers increased to 70 in 2020 and 76 in 2021 after the catchment area had been extended. In 2021, the point of oversubscription was reached among children without siblings within the 1500 metre radius catchment area at a distance of 1054 metres from the school, meaning that not all children from within the catchment area and no siblings from outside of it could be offered places. In 2019, with a smaller catchment area and consequently fewer children living in it, all siblings from outside the catchment area were offered places, including one who lived nearly six kilometres away from the school.

26. Contrary to the view of the local authority, increasing the size of the catchment area has disadvantaged some children. Those are the subject of this objection, that is children with a sibling at the school who do not live within the 1500 metre radius catchment area. Children without siblings at the school will be living in the areas of housing added to the catchment area in 2020 and these have been promoted in the priority order above siblings living beyond 1500 metres of the school. I must decide if this is reasonable and fair.

27. From its comments on the objection, allowing families in the village of West End to access the school is clearly important to the governing board. It is, therefore, reasonable for it to set a catchment area which supports this aim and so extending the radius to 1500 metres could be justified on those grounds. However, defining the catchment area simply through a radius and no other considerations led to the inclusion of part of another village. That may not be reasonable if as a result it proves impossible to meet demand for places from West End, a stated aim of the school. While living in a catchment area cannot guarantee a place at a school, parents living in a catchment area may well reasonably expect that in most years a place will be available for their child if they wanted one. While this may not be the case where a catchment area is deliberately set to be greater than the number of children likely to live within it in order to provide some access to a school with a religious character or single sex schools or because a catchment is served by more than one school, I do not understand any of these considerations to be the case here. In this case, the school was able to accommodate all in its catchment who sought a place in 2020, but not in 2021. In my view, it is too early to form a view on this on one year's data, the situation should be monitored, and if it continues to be the case that all demand from within the catchment area cannot be met, a review of the catchment area should be considered taking into account other possible approaches to defining that catchment other than the radius of a circle.

28. If the catchment area is reasonable, is it also reasonable for siblings living outside of the catchment area to have lower priority than all children living in the catchment area? I referred above to the issues which the school described when in the past admitting siblings from families that have moved into the catchment area to secure a place for one child before moving away had led to local children not being able to join the school. There are other mechanisms which could be employed to identify families who used this tactic, indeed the objector suggested one. These usually rely on the child's address history, add complexity to admission arrangements, can be difficult to evidence and have the potential to be unfair to families whose circumstances require them to move home.

29. The objector listed the benefits of having all children from the family at the same school. I do not think that anyone would dispute the general points she makes which are amplified by the school having a longer school day and different holidays to other schools in the area. However, it is of course necessary for families to have children at more than one school at the point when the eldest moves on to a secondary school and younger siblings remain in the primary sector. Generally speaking, the older children are, the less need there is from the perspective of managing family life for them to attend the same school, for example, they are able to travel to school independently.

30. I have noted that the school said the increase in the catchment area radius was to enable siblings of children admitted on appeal to have priority for places. From this it can be seen that the school understands the importance of sibling links, but it is also interested in the needs of children living near the school.

31. There is a balance to be struck between the advantages listed by the objector for siblings and the disadvantage that could be caused to a child living in the catchment area who might not get a place if out of area siblings were prioritised ahead of them. The displaced child would have a longer journey to school, the transport arrangements could prevent them from taking part in after school sport or other extra curricular activities. It would affect them socially as they would not be at school with their neighbours, and it would be more difficult for them to socialise with school friends at evenings and weekends. There could also be issues arising for any of their younger siblings, depending on the admission arrangements of those schools and the pattern of demand in future years. I have therefore taken into consideration the journeys to schools which could be available to children living in the catchment if they could not be offered a place at the school because out of area siblings had priority.

32. For children living in West End and the catchment area as a whole, it would be possible to walk to the school in less than 20 minutes. The Department for Education database called Get Information About Schools (GIAS) lists just one other state funded secondary school within a three-mile (4.8 kilometres) radius of a representative postcode in West End. That school is in Woking. Looking at timetables on the internet, the journey from the school's postcode to the other school would take about 36 minutes by public transport at the start of the school day.

33. There would be a great deal of variation in the access to other schools for children living outside the catchment area. As an example, I have looked at the schools within three miles (4.8 kilometres) of the objector's postcode. GIAS lists two other schools within three miles of that postcode, both farther away than the school. I would expect a child of secondary school age to be able to walk to the school in about 20 minutes from that postcode. The other two schools identified by GIAS are in Camberley and Ascot. Information on the internet suggests that the school in Ascot can be reached by public transport in about 22 minutes and the one in Camberley in about 38 minutes.

34. I asked the local authority to comment on these journeys and about any contract buses it runs in the area. The local authority told me that it does not run any contract buses in the area and provided similar times for the journeys by public transport required to reach the other schools to those I had identified. It also indicated that it would be unlikely that a child living near the objector's post code could be offered a place at the school in Ascot even though it had the shortest travel time to reach it.

35. From this information I have concluded that a child living at either of the two representative postcodes would have similar journeys to alternative schools if they could not be offered places at Gordon's. The length of journey is in my view not unusual and is acceptable for secondary school age children. The representative postcode I have used to

consider the journey to alternative schools for an out of catchment area child is within a few metres of the catchment boundary, so for children living at other out of catchment postcodes, the balance will change, and alternative schools will become more easily accessible.

36. The objection is that the oversubscription criteria are neither reasonable nor fair as required by paragraph 1.8 of the Code. The school has explained why the radius of the catchment area has changed in recent years and why it gives lower priority to siblings who live outside of the catchment area than to children within it in the way it does. I find that the criteria are reasonable. I have also considered what unfairness accrues to a sibling living outside of the catchment area if they are unable to be offered a place because children in the catchment area fill the school. The alternative schools available to such children are not an unacceptable distance away. I am sympathetic to the issues that could arise in families because the school has a different length of day and different school holidays to other schools in the area. However, when sending the older child, or children, to the school parents were prepared to manage those differences. They may have anticipated that they would only have to manage the situation for a fixed number of years until their youngest child joined the school but admission arrangements can change each year as will the number of applicants to the school and where they live. The independent appeal process offers a safety net for families where circumstances override decisions taken on the basis of clear and objective criteria such as these. Consequently, I can find no unfairness arises and I do not uphold this part of the objection.

Admission on the basis of aptitude for sport or performing arts

37. In this section I will consider both the objection to the introduction of places for children with an aptitude for sport or performing arts and my concerns about the way in which these places are allocated.

38. The objector said:

“I am further concerned that the school is considering children with special skills ahead of both local children, and children who live outside the 1500km radius even when they have siblings at the school (including those who have not moved further away from the school – as dealt with above). This does not seem to be within the spirit of the schools [sic] approach to local families in any way, which is the primary reason why it is not a good idea, particularly given the concerns about there being enough places for local pupils in the first place. It is thus neither fair nor reasonable, and is therefore contrary to the code.”

39. My concerns were that it was not clear from the arrangements how priority for the 12 aptitude places would be decided if they were oversubscribed. Furthermore, the description of the tests for aptitude did not appear to meet the requirements of paragraph 1.32a of the Code to be tests of aptitude and not ability. This was because the description of the performing arts assessment included “Students may also wish to prepare a performance piece in their chosen discipline”, and the test for sport included an element described as “a

skill based assessment in the student's discipline of choice." These both appeared to me to be assessing a child's ability rather than their aptitude.

40. The school did not initially comment on the part of the objection concerning the aptitude places; however, it did comment on the issues which I raised. It said: "In respect of oversubscription criteria for the aptitude places, it is noted that we have not addressed this issue and we will amend to state that lots will be used in the event of oversubscription." It also said: "Having read your concerns we have reviewed and amended the aptitude assessment for performing arts and sport". The revised amended aptitude tests described to me no longer include what I consider to be skills, but only aptitudes such as recognising rhythm or tests of balance and agility.

41. The school also suggested that it would reduce the number of aptitude places from 12 to 9 to reflect that they would only be available for day pupils which have a PAN of 88. Paragraph 1.24 of the Code allows up to 10 percent of "the total admission intake" to be selected on the basis of aptitude, so this would not be necessary as the total intake will be 120.

42. I asked the school again for comments on the objection itself, asking why it had introduced the selection on the basis of aptitude. It said the decision to introduce selection by aptitude was taken on the following basis:

- The school recognised that there may be disadvantage to some local families, it therefore increased the PAN for Day Boarders from 84 to 88 for September 2022

- The school is heavily oversubscribed and families often move to the area specifically to get their children into the school. As with many successful schools, we have been increasingly conscious that it is only possible for those families that have the financial means to afford the increasingly high house prices of the houses to move to within the 1.5KM radius of the school. Aptitude places will increase social mobility by enabling those living outside our narrow catchment to attend the school.

- The School has recently opened its new Sports Hub building and is developing a Performing Arts Centre in the old Gym. Aptitude places will help to ensure that students who are more likely to benefit from these facilities are able to do so.

- The school does not believe there will be a negative impact on admissions at other local schools as a result of introducing the aptitude places based on the fact that Surrey is currently short of secondary school places in the local area. This year the school offered an additional four places for September 2021 taking it over PAN to assist Surrey in placing children that were without a school place."

43. In the second of these points, the intention of the aptitude places is stated as being "enabling those living outside our narrow catchment to attend the school". This seems to me to be entirely at odds with the reason given for introducing the, initially 1000 metre, and now 1500 metre catchment area. This was to enable children living in the village to be offered

places at their local school. The extra four places in the PAN would offset some, but not all of the places given to children from outside the village on the basis of their aptitude.

44. Paragraph 1.8 of the Code requires that oversubscription criteria are “reasonable”. To set a catchment area criterion to support the admission of local children and then in a subsequent year to introduce another criterion which has the opposite effect cannot be reasonable. For this reason I uphold this part of the objection.

The supplementary information form

45. Paragraph 2.4 of the Code sets out the requirements for supplementary information forms:

“In some cases, admission authorities will need to ask for supplementary information forms in order to process applications. If they do so, they **must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability. They **must not** ask, or use supplementary forms that ask, for any of the information prohibited by paragraph 1.9 above or for:

- a) any personal details about parents and families, such as maiden names, criminal convictions, marital, or financial status (including marriage certificates);
- b) the first language of parents or the child;
- c) details about parents’ or a child’s disabilities, special educational needs or medical conditions;
- d) parents to agree to support the ethos of the school in a practical way;
- e) both parents to sign the form, or for the child to complete the form.”

46. I was concerned that the arrangements say that is compulsory for all applicants to complete the SIF. While it may not be possible to establish if some of the oversubscription criteria are met without a SIF, a local authority common application form will provide sufficient information to give looked after children the correct priority as well as those without siblings at the school. The form itself collected information such as details of the applicant’s current school and information about special needs prohibited by paragraph 2.4 of the Code.

47. When I raised these matters, the local authority said that the SIF appeared to be unnecessary when applying for a day place. The school said that it needed to collect additional information from applicants for residential places, for example to contact a child’s current school when considering suitability for boarding. However, having considered my questions it said it would remove the requirement for applicants for day places to complete a SIF.

Summary of Findings

48. When setting admission arrangements, it is necessary to have a clear intention of which groups that will be prioritised if a school is oversubscribed as this one is. The school told me that it wished to prioritise children from the village in which it is situated above siblings from farther away. It considered how to do so and implemented a catchment area, giving children living in it greater priority than siblings from outside of it. I find that the oversubscription criteria are reasonable although it may be desirable to review the catchment area if it proves that the point of oversubscription is reached within it every year.

49. I have considered whether any unfairness arises to siblings of children living outside of the catchment area if they are unable to be offered places at the school. For every out of catchment sibling offered a place, an in-area child would be refused one. Ease of travel to other schools is similar and there would be potential issues for siblings of the displaced children in future years. On balance I find there is no unfairness to out of area siblings from the criteria and the independent appeals process is a safety net for families whose circumstances are not taken into account within the reasonable, clear and objective criteria set by the school. I therefore do not uphold the first part of the objection.

50. The second part of the objection was to the introduction of places for children on the basis of their aptitude for sport or the performing arts. The school told me that this was to enable children from farther way to get places at the school. This is entirely contrary to the reasons given for the introduction of the catchment area and I find it unreasonable, so I uphold this part of the objection. In addition, the way in which the arrangements described the allocation of these places did not conform with the Code, this was recognised by the school.

51. The arrangements say that it is compulsory to complete a SIF for day places. It is not, and the SIF asked for information prohibited by the Code. I am pleased to say that the school recognised this and has said it will not require a SIF for day places.

Determination

52. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2022 determined by Gordon's School Academy Trust for Gordon's School, Surrey.

53. 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.

54. 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: 10 June 2021

Signed:

Schools Adjudicator: Phil Whiffing