



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3828

Objector: Two parents

Admission authority: North Leamington School for North Leamington School, Warwickshire

Date of decision: 13 July 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 North Leamington School for North Leamington School, Warwickshire.

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 two parents (the objectors), about the admission arrangements for September 2022 (the arrangements) for North Leamington School (the school), an academy school for children aged 11 to 18. The objection concerned the consultation undertaken before the arrangements were determined, the catchment area and the waiting list.
2. The local authority for the area in which the school is located is Warwickshire County Council. The local authority is a party to this objection. Other parties to the objection are the admission authority for the school which is the academy trust also called North Leamington School (the trust) and the objectors.

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. These

arrangements were determined on 20 December 2020 by the governing board on behalf of the trust, which is the admission authority for the school, on that basis.

4. The objectors submitted their objection to these determined arrangements on 12 May 2021. The objectors have asked to have their identity kept from the other parties and have 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 their names 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.

5. On the objection form the objectors listed 18 paragraphs of the School Admissions Code (the Code) which they considered were contravened by the arrangements. They also referred to four provisions in the School Admissions Appeals Code and one in the General Data Protection Regulation which they considered the arrangements breached. It appeared to me that many of the issues referred to on the objection form and described in an accompanying document were not in the jurisdiction I have under section 88H of the Act. My jurisdiction is solely for the determined arrangements for 2022 (and in some cases for any consultation taken prior to the determination of those arrangements). My jurisdiction does not extend to actions taken or not taken by the trust, the local authority or other bodies in relation to the admission arrangements or the application of those arrangements in previous years.

6. In order to clarify the parts of the objection that were in jurisdiction I asked the Office of the Schools Adjudicator to write to the objectors. After an exchange of letters in which the objectors referred to more parts of the Code, I formed the view that three of the matters raised by the objectors were in jurisdiction. These concern consultation on the arrangements, the catchment area and the waiting list.

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. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 12 May 2021, supporting documents and subsequent correspondence;
- d. the school's response to the objection and its responses to my enquiries;
- e. maps of the area identifying relevant schools; and

- f. confirmation of when consultation on the arrangements last took place and details of the nature of the consultation.

The local authority was invited to comment on this case and to provide further information but did not do so.

The Objection

9. The first part of the objection which I am considering concerns the consultation undertaken by the trust before the arrangements were determined specifically in regard to the PAN and the catchment area.

10. The second part of the objection is that the catchment area does not conform with paragraph 1.14 of the Code and *R v Greenwich London Borough Council, ex parte John Ball Primary School* (1989) 88 LGR 589 [1990] Fam Law 469, commonly known as the Greenwich Judgement. Furthermore, the objectors consider that the catchment area unfairly disadvantages children from a particular social or racial group and so does not conform with paragraph 1.8 of the Code.

11. The third part of the objection was that the waiting list does not conform with paragraph 2.14 of the Code.

Background

12. The school is situated, as its name suggests, on the northern edge of Royal Leamington Spa. There are four other state-funded secondary schools within three miles of its postcode. The arrangements include a PAN of 240 and the oversubscription criteria can be summarised as follows.

1. Looked after and previously looked after children
2. Children who live in the catchment area
3. Children with siblings at the school
4. Children of members of staff
5. Other children.

Within each criterion, priority is given to children who live closest to the school with random allocation being used as a final tie-breaker.

Consideration of Case

Consultation

13. The objectors said that in 2019 the school offered 270 children places at the school although the PAN at the time was 240. They argued that this constituted an increase in the PAN and that to set a lower PAN in a subsequent year required prior consultation.

14. Paragraph 1.3 of the Code says: “Own admission authorities are not required to consult on their PAN where they propose either to increase or keep the same PAN. All admission authorities **must** consult in accordance with paragraph 1.42 below where they propose a decrease to the PAN.”

15. The school told me that 30 additional pupils were offered places in 2019 to help the local authority address a shortage of school places in the area. It told me that this was not an increase in the PAN.

16. The objectors referred to paragraph 1.4 of the Code and so should be aware of its provisions. This says:

“Admission authorities **must** notify their local authority of their intention to increase the school’s PAN and reference to the change should be made on the school’s website. If, at any time following determination of the PAN, an admission authority decides that it is able to admit above its PAN, it **must** notify the local authority in good time to allow the local authority to deliver its co-ordination responsibilities effectively. Admission authorities may also admit above their PAN in-year.”

17. This clearly states that admission authorities can at anytime decide to admit above its PAN and **must** notify the local authority in good time. The admission of 270 children in 2019 is therefore entirely consistent with the Code and did not alter the PAN. Therefore, the PAN remained at 240 and it would only have been necessary for the trust to consult on its PAN in any subsequent year if it wished to reduce it from that figure. It has not and so no consultation has been required on the school’s PAN.

18. The objectors also said that the trust failed to consult on its catchment area. I was told by the school that arrangements were previously consulted on in 2016 when the school became an academy and the area of Bubbenhall was added to the catchment area. Paragraph 1.42 of the Code requires that “admission authorities must consult on their admission arrangements at least once every 7 years, even if there have been no changes during that period”. There was, therefore, no requirement for the trust to consult on any aspect of the 2022 arrangements if no changes were proposed. However, it decided to do so.

19. The consultation on the 2022 arrangements proposed no changes to the arrangements except to amend the definition of previously looked after children in line with the Government’s proposed changes to the Code. In the event, no changes to the arrangements were made to the arrangements because the proposed changes to the Code were yet to be approved by Parliament. In passing, I note that there is no need for admission authorities to consult on changes to arrangements where they are needed to give effect to a mandatory requirement of the Code. This is set out in paragraph 3.6 of the Code.

20. It appears to me that it was unnecessary for there to be any consultation on the arrangements for 2022 at all. However, the trust decided to consult and so I have examined the process of consultation which it undertook. From the papers provided by the school I am

satisfied that the consultation was for six weeks as required by paragraph 1.43 of the Code. The consultation document was sent to the local authority and a large number of schools. I cannot be completely certain that every admission authority and governing board in the relevant area was consulted because the local authority has not responded to my enquiry about the extent of the relevant area it has set for this school. It is the role of the local authority to consult on and set the relevant area for schools and I will not find against the school if the relevant area has not been made clear to it. However, paragraph 1.44 of the Code requires consultation with parents of children aged 2 to 18. I have not been provided with any indication efforts were made to consult parents beyond a statement that the proposed arrangements were placed on the school's website. I find that the requirement to consult parents does not appear to have been met.

21. While the consultation may have been flawed in this way, it is possible for an admission authority to determine arrangements which conform entirely with the Code following a consultation that does not meet the Code's requirements. It is also possible for an admission authority to consult perfectly and then determine arrangements which do not conform with the Code. The objection was that the school did not consult on the PAN or the catchment area. It was not required to consult, but did so even if not perfectly, therefore, I do not uphold this part of the objection.

The Catchment Area

22. The catchment area is defined in the arrangements as a list of eight rural parishes and parts of Royal Leamington Spa. The objectors said that the parishes listed in the definition of the catchment area were all in the "Warwickshire District [sic] Council boundaries". They argued that the village in which they lived was closer to the school than the most distant parts of the listed parishes suggesting that the presence of a travellers' camp in their village was a factor considered when deciding to set the catchment area as it is rather than using a simple distance measurement to give priority for places.

23. Paragraph 1.14 of the Code says "Catchment areas **must** be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school."

24. While including a map in the arrangements rather than referring to the availability of one on the local authority's website may make the catchment area easier to see as a whole, the definition is in my view clear. The catchment area has been in its current form since 2016 and will be well known in the community. The school said that socio-economic factors were not taken into account when setting the catchment area and quoted areas of deprivation within it.

25. The objectors would appear to prefer that the catchment area was different, or not used at all, with places being offered on the grounds of distance from the school alone. The trust has chosen over many years to use a catchment area and is entitled to do so. The test in the Code is whether that catchment area is reasonable and fair, including compliance with the Greenwich Judgement.

26. I can dismiss any question of compliance with the Greenwich Judgement in short order. That judgement held that pupils should not be discriminated against in relation to admission to the school simply because they reside outside the local authority area in which the school is situated. It does not mean that catchments cannot be used or that they must always include parts of another local authority area. A child who does not live in the catchment area, whether in Warwickshire, Coventry or other local authority area is given priority for a place at the school on the same basis.

27. In rural and semi-rural areas, catchment areas serve the purpose of ensuring that children who live a long way from all schools have a high degree of priority for at least one school. This can mean that children can live nearer the school than some parts of the catchment area, but not be in it. This is entirely reasonable and fair if they have other schools which they can get to.

28. In 2020 the point of oversubscription was reached in the third oversubscription criterion, siblings who do not live in the catchment area at a distance of 6.934 miles from the school. In 2021 it was reached in the second criterion, living in the catchment area, at a distance of 3.839 miles from the school.

29. According to the Department for Education database “Get Information About Schools” (GIAS), the objectors’ post code is 5.43 miles from the school. GIAS lists 15 state-funded secondary schools which are closer to the objectors’ postcode, the closest is 2.46 miles away in Coventry. The travellers’ site of concern to the objector is similarly well located in relation to other schools and not including the village containing the site in the catchment area is not unfair discrimination.

30. The school would appear to be fully subscribed from within its current catchment area in some years and any increase of the catchment area to include a village with 15 schools closer to it would at the very least be unhelpful to some of those it is intended to serve. There is certainly nothing unreasonable or unfair in its not including the area of concern to the objector. I do not uphold this part of the objection.

Waiting list

31. The objectors said that the arrangements did not make clear that the Fair Access Protocol takes precedence over the waiting list. Paragraph 2.14 of the Code requires:

“Each admission authority **must** maintain a clear, fair and objective waiting list until at least **31 December** of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria. Priority **must not** be given to children based on the date their application was received or their name was added to the list. Looked after children, previously looked after children, and those allocated a place at the school in accordance with a Fair Access Protocol, **must** take precedence over those on a waiting list.”

32. Under the heading “Waiting list”, the arrangements say:

“If North Leamington School is oversubscribed, it will maintain a clear, fair and objective waiting list. Priority will continue to be based upon the oversubscription criteria and will be subject to re-ranking when new applicants are added to the list. The waiting list will be maintained for the first academic term in the year of admission.”

33. In response to the objection, the school said

“North Leamington School’s policy complies with paragraph 2.14 of the Code. The requirement in the Code is for the admission arrangements to set out how long the waiting list will be held for and to include a statement around the need for re-ranking when a new applicant is added to the waiting list. The second half of paragraph 2.14 sets out the operational requirements of dealing with the waiting list. This sets out the requirements not to prioritise applicants based on the date they were added to the waiting list or how vulnerable children or those included in Fair Access arrangements must be given precedence over the waiting list. There is no obligation for the admission arrangements to provide details in the policy of these operational matters.”

34. Careful reading of paragraph 2.14 of the Code confirms the arrangements must state that the waiting list is kept to 31 December and the need to rank the list again in the order of the oversubscription criteria if a child is added to it. It does not require that any mention is made of the Fair Access Protocol. Therefore, I do not uphold this part of the objection.

35. I do note that the arrangements say the waiting list will be held until the end of the term, the requirement of the Code is for the waiting list to be held until 31 December. These dates could be interpreted differently. I make no formal finding on this, and I am sure the trust will want to make a small revision to the arrangements at the same time it revises them to give effect to the new Code to make it entirely clear that the waiting list is kept for as long as required by the Code.

Summary of Findings

36. I found that much of the objection was to matters outside of my jurisdiction which is solely for the admission arrangements for 2022. There were three parts of the objection within my jurisdiction. The first concerned consultation on the PAN and the catchment area. There was no requirement for the school to consult on either of these aspects of the arrangements, or to consult at all but it did so. Therefore, I do not uphold this part of the objection.

37. The second part of the objection was to the catchment area. I find the catchment area does conform with the Code and I do not uphold this part of the objection.

38. The final part of the objection concerned the waiting list. I do not uphold this part of the objection.

Determination

39. 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 North Leamington School for North Leamington School, Warwickshire.

Dated: 13 July 2021

Signed:

Schools Adjudicator: Phil Whiffing