



Office of
the Schools
Adjudicator

Determination

Case reference: ADA4156

Objector: A member of the public

Admission authority: Ark Schools

Date of decision: 24 July 2023

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 2024 determined by Ark Schools (the admission authority) for Ark Alexandra Academy, Hastings, East Sussex.

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 member of the public, (the objector), about the admission arrangements (the arrangements) for Ark Alexandra Academy, an Academy for pupils aged 11-18 years, (the school) for September 2024.
2. The local authority (LA) for the area in which the school is located is East Sussex County Council. The LA is a party to this objection. Other parties to the objection are Ark Schools (the Trust) and the objector.

Jurisdiction

3. The terms of the Academy agreement between the Trust and the Secretary of State for Education require that the admissions policy and arrangements for the school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the Trust, which is the admission authority for the school, on that basis. The objector submitted her objection to these determined arrangements on 12 May 2023. 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.

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 Trust at which the arrangements were determined;
 - b. the determined arrangements;
 - c. the objector's form of objection dated 12 May 2023;
 - d. the LA's response to the objection dated 16 June 2023 and home to school transport policy;
 - e. the Trust's response to the objection dated 22 June 2023;
 - f. a map of the area identifying relevant schools; and
 - g. information that is publicly available.

The Objection

6. The objection is that the school's use of a pre-defined community area as part of its oversubscription criteria is unlawful as it is "based on a council boundary" and does not comply with the requirements of the Code. It is clear to me that what is referred to as a "pre-defined community area" is a catchment area. For ease of reference I will use the term catchment area in this determination, as that is the term used in the Code.
7. The objector's home is just outside the boundary of the catchment area, in the catchment area served by another school – namely Rye College. Rye College is approximately ten miles from the objector's home whereas the school is less than one mile away. The objector argues that the catchment area policy is unlawful because it uses local authority boundaries in a way that she considers to be contrary to the judgement in *R v Greenwich London Borough Council, ex parte John Ball Primary School (1989) 88 LGR 589 [1990] Fam Law 469* (the Greenwich judgement) and it is unfair because it requires her child to travel to a school that is much further away from her home than other schools in the neighbouring catchment.
8. The relevant provisions of the Code are:
 - a. Paragraph 1.8 "*Oversubscription criteria must be reasonable, clear, objective, procedurally fair and comply with all relevant legislation...*"; and

Paragraph 1.14 "*Catchment areas must be designated 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.”.

9. A footnote to paragraph 1.14 of the Code clarifies the requirements for catchment areas as follows:

“R v Greenwich London Borough Council, ex parte John Ball Primary School (1989) 88 LGR 589 [1990] Fam Law 469 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. Section 86(8) of [the Act] places an equal duty on local authorities to comply with parental preference in respect of parents living within and outside their boundary.”.

Background

10. The admissions authority is required under a funding agreement with the Secretary of State for Education dated 30 August 2013 (the agreement) to comply with the law and the Code as they apply to maintained schools in relation to the school. Under Annex 1 to that agreement, the admission authority is required to participate in the coordinated admissions arrangements operated by the local authority.

11. The school is a mixed, non-selective secondary academy. It currently has 1454 pupils on roll. The most recent Ofsted inspection in 2021 rated the school as “requires improvement”. The school’s published admission number (PAN) for 2024/25 is 360 for year 7, which is the relevant year group. After admission of children with an education health and care plan that names the school, the oversubscription criteria are (in summary):

- i. Looked after and previously looked after children;
- ii. Children of staff at the school in a post where there is a demonstrable skill shortage;
- iii. Siblings of children at the school;
- iv. Children of staff who have been employed at the school for 2 years or more;
- v. Children living in the pre-defined community area of Hastings and St Leonards;
- vi. Other children.

The “tie-breaker” is the straight-line distance between the child’s home address and the main entrance of the school.

12. The school was formed in 2013 when William Parker Sports College converted to academy status. In 2019, the school merged with Ark Helenswood Academy. The Trust has told me that:

“The pre-defined community area in the Ark Alexandra over subscription criteria is the same as ... for both predecessor schools.

As part of the merger discussions and consultations with the local authority they stated that they would require us to retain use of the pre-defined community area for Ark Alexandra. We were content to agree to this as it provided continuity and certainty to parents regarding admissions for the merged schools. Additionally, we believe using the East Sussex predefined community area is less confusing to parents when applications are made as they are used by the majority of schools in Hastings.”

13. The most recent consultation on the arrangements took place in October 2018. No members of the public or other schools responded to that consultation. The LA responded that they wished the catchment area to be retained. No further consultation on the arrangements is required until 2025.

14. The Hastings and St Leonards pre-defined community area that forms the catchment area for the school includes two other secondary schools that are less than three miles of the objector’s home:

- Hastings Academy
- St Leonards Academy

Both of these schools are mixed non-selective academy schools for pupils aged 11-16 years. They form part of the University of Brighton Academies Trust. St Leonards Academy, which has a similar number of students on roll to Ark Alexandra Academy, is Ofsted rated “requires improvement” (inspection 2022). Hastings Academy, which is much smaller, is Ofsted rated “good” (inspection 2018).

15. The LA has told me that in each of the admissions years 2021/22, 2022.23 and 23/24:

“... St Leonard’s Academy was able to offer places to all applicants and the admission priorities were not needed. This was also the case with Hastings academy in 2023/24 and 2022/2[3]. For 2021/22 admissions the admissions priorities were applied but the academy had space for all in area applicants and offered places to two children outside the area. The further of these lived 4333 metres from the academy as measured in a straight line.”

16. The Trust has provided the following information about admissions to year 7 at the school in 2023/24:

“Admissions for September 2023 is the first time it has been necessary to apply the oversubscription criteria as in previous years the school was under-subscribed and all 1st choice applicants were offered a place.”

In September 2023:

- 254 pupils were admitted under oversubscription criterion v (catchment area):

- the distance from the school to the home address of the child living furthest from the school who was allocated a place under criterion v was 2789m (1.73 miles);
- 23 pupils who applied under criterion v were not allocated a place at the school; and
- no pupils were allocated places under oversubscription criterion vi (other children).

17. The LA has confirmed that the catchment area for the school was adopted many years ago. The LA provided the following information about the catchment area:

“It shares no boundaries with the border of East Sussex, but is a clearly defined boundary which is easy for parents to understand, as parents will be aware which district/borough provides their services...”

The boundary of the area reflects the boundary of Hastings Borough... [It] is also used by all community schools in the Hastings borough and is the boundary for the surrounding rural schools as well. It is used by some Academies in the area, although not all. There are several roads and a caravan park on the north side of the Ridge which fall into the community areas for rural primary and secondary schools, and whose residents have historically been happy to be prioritised for rural schools while at the same time having access to schools within Hastings borough should this be their preference. The area boundaries have been drawn to ensure that every address in East Sussex falls into the community area for at least one school, enabling access for children to local school provision.”

18. I note that, under the LA’s home to school transport policy, children over eight years of age who live more than three miles away from their designated school are provided with free transport between home and school. For these purposes “designated school” is defined as

“... the school suitable to the child’s age and ability which serves the area in which the child lives. If there is more than one school, this is the nearest school to the home which is suitable for the child and at which a place is available....”

The LA has confirmed that the designated school may be a school that serves the catchment area in which the child lives (in this case Rye College) or a nearer school in a different catchment area that is more than three miles from the child’s home. The LA would expect a child attending Rye College from the road where the objector lives to take the bus (there is a direct bus route) and the child would be given a bus pass.

Consideration of Case

19. The use of catchment areas is lawful under paragraph 1.14 of the Code. The question I am required to determine is whether in the particular circumstances of this case,

the catchment area is lawful and meets the requirements in paragraphs 1.14 and 1.8 of the Code.

20. The catchment area is defined by reference to the boundary of the borough council of Hastings and St Leonards. The objector argues that this is not lawful under the Greenwich judgement.

21. The Greenwich judgement concerns the proper interpretation and application of provisions of the Education Act 1980, now replaced by section 86 of the Act. It is, broadly, to the effect that a local authority must not discriminate against pupils from outside its own boundaries by giving priority in admissions to those who live within it. As it says in the footnote to paragraph 1.14 of the Code, there is “*an equal duty on local authorities to comply with parental preference in respect of parents living within and outside their boundary*”.

22. In this case both the objector’s home address and the school are within the area served by East Sussex County Council, which is the local authority for the purposes of the Act. The whole catchment area of Hastings and St Leonards is also wholly surrounded by the local authority area. At no point do the boundaries of the pre-defined community area of Hastings and St Leonards coincide with the boundaries of the local authority area. The catchment area is only a small part of the total local authority area. I do not therefore consider that the Greenwich judgement is of any assistance in this case.

23. Under paragraph 14 of the Code, a school is required to have fair, clear and objective criteria for allocating places when it is oversubscribed ie when applications for places at the school exceed the school’s admission number. Catchment areas are one of a number of permitted oversubscription criteria set out in section 1 of the Code. Where an admission authority (in this case, the Trust) has lawfully adopted a catchment area as part of its oversubscription criteria, it can refuse to comply with parental preference where the school is oversubscribed, the child does not live within the catchment area and all places have been allocated to children who do live in the catchment area or meet a higher criterion. It is a defining characteristic of a catchment area that it has a boundary. The boundary may appear rather arbitrary to a person who lives one side or another, especially if person feels that their child is thereby disadvantaged in applying for a place at a preferred school that happens to be nearer their home. This alone does not make the choice of boundary unreasonable. The boundary must comply with the requirements in paragraph 1.14: it must be reasonable and clearly defined; and it must not prevent parents who live outside the catchment area from expressing a preference for the school.

24. In this case, the boundary of the pre-defined community area is coterminous with a borough boundary. The borough council has no responsibility for local educational provision. I have seen no evidence that the boundary was adopted to give priority to residents in East Sussex over persons who live outside East Sussex (which could be contrary to the Greenwich judgement). According to the LA, it is part of an overall scheme established for the purpose of ensuring that all children in the East Sussex area have priority for one or more schools. The Trust agreed to participate in the scheme, as it was

one which has operated for a number of years and with which parents in the LA's area are familiar. The catchment areas could of course be drawn differently, but selecting borough boundaries on the basis that this is a "*clearly defined boundary that is easy for parents to understand*" is a straightforward and objective method of defining catchment areas.

25. One of the objector's main concerns about the catchment area policy appears to be that it creates uncertainty for children and parents. It is worth observing in this connection that certainty of making a successful application for school admission is very difficult to achieve for the reason that the characteristics of pupil populations vary year on year, as the birth rate fluctuates, and people move into and out of particular areas. For example, if more applications are received under the sibling criterion in one year, the school will have fewer places available to allocate under the catchment area criterion. It is not easy for parents to understand or predict these variations. The popularity of schools also varies – until this year, the school was undersubscribed and so in the position of being able to offer places to all the children who expressed a preference for it.

26. Living within a school's catchment area does not in itself guarantee a place and for this reason the school has distance between the child's home and the school as a tie-break criterion. In 2023/24, its first year of being over-subscribed, the school has had to disappoint 23 applicants who live in the catchment area but not close enough to the school to secure a place. If the catchment area were to be extended as the objector argues, to include more of the hinterland of Hastings and St Leonards, it is likely that more children living in the catchment area would not be allocated places. On the other hand, by participating in the LA's catchment area policy that applies across the whole county (even if not used by every school in the area), the Trust supports the LA's efforts to ensure that every child has a priority for at least one school.

27. It is important to note that the LA's policy on pre-defined community areas is supported by a school transport policy, which provides for free transport for any child who lives more than 3 miles walk from their designated school. In the objector's case, this would mean that their child would be entitled to free transport to attend Rye College, which serves the pre-defined community area in which they live, if not allocated a place at a school in Hastings.

28. Finally, the catchment area policy does not prevent the objector from expressing a preference for any school in Hastings and St Leonards, and I note that there are two schools in addition to Ark Alexandra Academy, situated less than three miles from where the objector lives, one of which is under-subscribed and the other allocated places for September 2023 to children living outside its catchment area, whose homes are further away from that school than the objector's.

Summary of Findings

29. The catchment area is not unlawful under the Greenwich judgement, which does not apply to it. The arrangements comply with section 86(8) SSFA as they do not prevent parents who live outside the catchment area from expressing a preference for the school:

those applications can be considered under oversubscription criterion vi (other children). A catchment area coterminous with the local borough boundary provides a clear boundary with which parents will be familiar and is objective. It therefore complies with paragraph 1.8 of the Code.

30. I find that overall, the arrangements are fair and comply with paragraph 14 of the Code, when the LA's school transport policy and the availability of places at two other non-selective mixed academy schools within 3 miles of the objector's home are taken into consideration.

Determination

31. In accordance with section 88H(4) of the Act, I do not uphold the objection to the admission arrangements determined by the Ark Schools for Ark Alexandra Academy, Hastings, East Sussex.

Dated: 24 July 2023

Signed:

Schools Adjudicator: Helen Jeffrey