



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3180 and ADA3181

Objectors: Members of the public

Admission Authority: The Governing Body of Lowbrook Academy,
Maidenhead

Date of decision: 2 September 2016

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objections to the admission arrangements for September 2017 determined by the governing body for Lowbrook Academy, Maidenhead, Berkshire.

I have also considered the arrangements in accordance with section 88I(5). I find that there are other matters which do not conform with the requirements relating to admission arrangements.

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 unless an alternative timescale is specified by the adjudicator.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), objections have been referred to the adjudicator by two members of the public (the objectors) about the admission arrangements (the arrangements) for September 2017 for Lowbrook Academy (the school), an academy school for children aged 5 to 11. The objections are to the priority given in the oversubscription criteria to siblings of children attending the school who do not live in the school's catchment area.

Jurisdiction

2. 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 school are in accordance with admissions law as it applies to maintained schools. These arrangements were

determined by the governing body, which is the admission authority for the school, on that basis. The objectors submitted their objections to these determined arrangements on 12 May 2016. The objectors have asked to have their identities 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 addresses to me. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

3. The other party to this case is the Royal Borough of Windsor and Maidenhead, which is the local authority (the LA) for the area where the school is situated.

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. the objectors' forms of objection dated 12 May 2016;
 - b. the admission authority's response to the objection and supporting documents;
 - c. information provided by the LA concerning the number of applicants for place at the school in September 2016;
 - d. information from the LA's and other local primary schools' websites;
 - e. maps of the area identifying relevant schools;
 - f. confirmation of when consultation on the arrangements last took place;
 - g. copies of the minutes of the meeting at which the governing body of the school determined the arrangements; and
 - h. a copy of the determined arrangements.

The Objection

6. The two objections were identical and quoted paragraph 1.8 of the Code which says that oversubscription criteria must be reasonable.
7. The objectors said the arrangements were unreasonable because the school gave priority in its oversubscription criteria to all siblings regardless of where they live. The objectors said that all other schools in Maidenhead prioritise all children who live in a school's designated area ahead of siblings who came from farther away. The objectors

said this led to children from the Lowbrook area not being allocated places and having to travel five miles to attend other schools. The objectors said that the situation is compounded by the admission of larger year groups in recent years and the use of random allocation as a tie-breaker if oversubscription is reached in the sibling criterion.

Other Matters

8. When I considered the arrangements I noted that:
 - a. they did not appear to be published on the school's website as required by paragraph 1.47 of the Code;
 - b. the arrangements did appear to not make clear the process for requesting admission outside of the normal age range as required by paragraph 2.17 of the Code ;
 - c. the definition of previously looked after children did not appear to reflect the introduction of child arrangements orders; and
 - d. the wording of the third, fourth and fifth oversubscription criteria appeared unclear, paragraph 1.8 of the Code requires that oversubscription criteria are clear.

Background

9. The school, which became an academy in 2011, is situated on the western edge of Maidenhead. It is adjacent to a secondary school and a special school.
10. The school has for some time had ambitions to expand from being a one-form entry school with a published admission number (PAN) of 30 to become a two-form entry school with a PAN of 60. In 2013 agreement was reached with the LA to take an additional 30 children into Reception (YR). Thirty additional children were also admitted in 2014 and 2015, but in 2016 the school could only offer 30 YR places as its accommodation was now full. Following discussions with the LA, involving the local Member of Parliament, a scheme was agreed to expand the school's accommodation so that it would be able to continue to offer 60 places in 2016 and beyond. The arrangements that I have been provided with for 2017 were determined before this agreement and say that the PAN for 2017 is 30.
11. The school is oversubscribed with 94 first preference applications for places in September 2016. Its oversubscription criteria can be summarised as:
 1. Looked after and previously looked after children.
 2. Siblings of children who will be attending the school when the child starts.
 3. Children of employees.

4. Children living in the catchment area.
 5. Children living outside the catchment area.
12. Random allocation is used as a tie-breaker for criterion 2, with distance as the tie-breaker for criteria 4 and 5.

Consideration of Case

13. The objectors said “*All schools (including all other academies) in Maidenhead follow the same oversubscription criteria which prioritises designated area over sibling.*” I have taken the term ‘designated area’ to be synonymous with the term ‘catchment area’ used in the Code.
14. The objectors maintained that because at Lowbrook Academy all siblings were prioritised over children living in the catchment area without an older sibling at the school, local children were unfairly penalised as a child living in Lowbrook’s catchment would also have low priority for places at all other schools. The objectors said this did not comply with paragraph 1.8 of the Code.
15. Paragraph 1.8 of the Code says “*Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child. Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.*” The objectors also suggested that this was the only school in the area which used random allocation as a tie-breaker and this added to the unfairness.
16. In its response to the objection, the school described the recent history of discussions with the LA about the expansion which would enable it to take up 60 children in each year group. It then said “*it is the School’s submission that it is entitled to prioritise siblings regardless of where they live ahead of children living in the designated area. The reasons for using siblings as an oversubscription criterion are well established. Thousands of schools up and down the country prioritise siblings in the same way. The very nature of admissions for a popular school means that inevitably there are some families who are going to benefit and some families who are going to lose out.*” The school also said “*The use of random allocation as an effective, clear and fair tie-breaker is also well established.*”
17. The LA made no comment on these objections, but provided information to confirm that the school was oversubscribed with first preference applications for September 2016. The school provided information which showed that after it was agreed to allocate 60 places

for September 2016 all siblings and catchment area children were offered places. This data showed that if the PAN of 30 had been kept to, not all siblings would have been admitted and no children from the catchment area without siblings would have been offered places.

18. I have looked at the 2017 admission arrangements for the eight primary schools which admit children to YR that are within two miles of the school's postcode. These schools were identified using the Department for Education (DfE) database called Edubase. Five of these are community schools and one is voluntary controlled. The LA is the admission authority for these six schools and I have confirmed that the oversubscription criteria do prioritise all children who live in the catchment area ahead of siblings of existing pupils who live outside of it. One of the other schools is an academy; it also prioritises all children who live in its catchment area above other siblings. The voluntary aided Catholic school prioritises all Catholics ahead of non-Catholic siblings with no geographic factors taken into account other than in the tie-breaker. For all of these schools the tie-breaker is based on distance with a ballot only being used if further differentiation is needed.
19. The LA publishes details about the allocation of places in previous years on its website. This shows that all of the available places were allocated at all of the community schools and the voluntary controlled school for September 2016. The point of oversubscription for each school is identified; all of these schools offered places to children from outside of the catchment area but only to some of those who already had siblings at the school. The LA's website does not give details about the point at which the two schools for which they are not the admissions authority were oversubscribed, but it does say that all places at them were allocated.
20. Given the distances that oversubscription was reached in the out of catchment sibling criterion, it is clear from this data that any child who cannot be offered a place at the school will be unlikely to be offered a place at a nearby one even if they already had a sibling attending it.
21. From the data provided by the school about the allocation of places for September 2016, with the PAN at 30 it would have been oversubscribed within the sibling criterion. Three siblings would not have been offered places. As the tie-breaker was random allocation these three may have lived in the catchment area or outside of it. This would have resulted in as many as 28 children who live in the catchment area having to be placed at schools over two miles away from their homes. No address in the catchment area is more than half a mile from the school and it is understandable that parents living in the catchment area consider it unfair that children from further away have greater priority for places.
22. As the school said there are benefits to having all siblings at the same school; not least are the practicalities of taking children to more than one school in the morning and collecting them in the afternoon. As well

as considering the unfairness to local families I have to consider the possible impact on the families of the siblings from outside the catchment area.

23. If siblings from outside of the catchment area did not have priority ahead of other catchment area children, then they would have been offered school places elsewhere resulting in those families having to take children to two different schools in the morning and collect them from two different schools in the afternoon. These families would I am sure perceive this as unfair to them.
24. As noted above the school said "*The very nature of admissions for a popular school means that inevitably there are some families who are going to benefit and some families who are going to lose out*". That is true and the school's oversubscription criteria are each permitted by the Code and are in common use elsewhere. However paragraph 14 of the Code says "*In drawing up their admission arrangements, admission authorities must ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.*" While each criterion may be fair in different circumstances, taken together against the background of a local shortage of places I must decide where the balance of fairness lays, with families who consider the arrangements unfair because they cannot get into their local school, or families who would consider them unfair if all of their children could not be at the same school.
25. The evidence about when the school last consulted on its admission arrangements showed that it was in December 2011 for September 2013. The Code says in paragraph 1.42 that "*Where the admission arrangements have not changed from the previous year there is no requirement to consult, subject to the requirement 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.*" Therefore the arrangements for 2017 should be the same as they were in every year since 2013.
26. The one exception to this concerns the PAN. As set out in paragraph 1.3 of the Code, the school is not required to consult before increasing its PAN; it must however consult before reducing its PAN. While the school decided to admit more than 30 pupils in 2013 and in subsequent years, as is permitted in paragraph 1.4 of the Code, it did not formally set a PAN of 60 at any time so no consultation has been required in recent years.
27. Consequently it has been the case that in the last four years parents have been applying for the school on the understanding that there would be 30 places available. Parents who applied from outside of the catchment area would have known that if their child was offered a place, then it would be likely that all of their children would be able to attend the same school. Clearly the more children from outside the catchment area are offered places, potentially the greater number of siblings to accommodate ahead of local children. As the objector said,

with 30 more places being offered above the PAN, more children from outside the catchment area were being offered places than may otherwise have been the case.

28. Although the school will now be in the position to admit 60 children in 2017, I must make my determination on the basis of the PAN being 30 as that is the figure in the determined arrangements. I must also take into account the local context. I think there would be disadvantage to families who live outside of the catchment area who accepted places at the school in the expectation that younger siblings would have high priority for places at the school. However, these children would also have high priority for their own catchment area school; they in effect currently have high priority for two schools.
29. Children living in the Lowbrook catchment area who are not offered a place at the school find that they have low priority for places at all other nearby schools and that low priority continues for any siblings. These children do not have a high priority for any school and I find this to be a greater unfairness than that which would accrue to out of catchment siblings at Lowbrook if they did not have high priority there.
30. If a school has a catchment area, then families living in it will have the expectation that their children will normally be able to be offered a place there. With a PAN of 30 the school would not be able to meet the demand from inside its catchment area. By giving priority to all siblings no matter where they live, the number of places that could be offered to local children is further reduced and the use of random allocation in this criterion means that not all catchment area siblings can be confident of a place.
31. For this reason and on the balance of fairness which is required by paragraph 14 of the Code I uphold the objection.

Other matters

32. Paragraph 1.47 of the Code requires the admission authority to publish arrangements on its website once it is determined. When I looked at the school's website on 19 May 2016 I could not find the arrangements. The school has acknowledged and corrected this matter.
33. The arrangements did appear to not make clear the process for requesting admission outside of the normal age range as required by paragraph 2.17 of the Code. The school acknowledged this omission and proposed a suitable amendment to the arrangements.
34. The definition of previously looked after children did not appear to reflect the introduction of child arrangements orders by the Children and Families Act 2014. Again the school has acknowledged this and proposed a suitable amendment.
35. The wording of the third oversubscription criterion begins "*Children whose parents are staff and are employees of the Academy Trust. The*

staff must all work for the Academy Trust (working at the Academy Trust does not satisfy this criteria)” before setting out conditions of that employment. The Code permits, in paragraph 1.39, priority to be given to children of staff at the school in certain circumstances, it does not allow priority to be given to children of any employee of the trust. It was not clear to me what the initial wording of this criterion meant so I was unable to consider whether it met the requirement of paragraph 1.39.

36. When I raised the clarity of this criterion with the school it proposed to clarify that this criterion applied to children of staff working at the school. The wording proposed by the school is “*work for Lowbrook Academy*” which may not be the same as at Lowbrook Academy.
37. The fourth and fifth oversubscription criteria both included the phrase “*If this criterion is used distance will be the method used and those closest to the school will be offered a place in priority order up to the admissions number.*” While the wording may be considered clumsy, it is also unclear because measurement of distance and the “*admissions number*”, presumably the PAN, only come into play if oversubscription is reached in that criterion.
38. In response to my enquiries on this point the school proposed new wording of both criteria which addresses these issues.

Summary of Findings

39. With a PAN of 30 the school is unable to meet the demand for places from within its catchment area. The school has attempted to support both the local community and families from farther away by offering 60 places for the last four years. When these arrangements were determined the school was not in a position to continue to offer more than 30 places. Subsequently an agreement has been reached with the LA which will allow the PAN to be raised to 60 for future years. This determination however, must be on the arrangements referred to me; with a higher PAN a different conclusion may have been reached.
40. Where schools use catchment areas as an oversubscription criterion, parents living in the catchment area usually have an expectation that places will be available for their children. The already insufficient number of places available to children living in this catchment area is reduced further by giving priority to all siblings and using random allocation if the school was oversubscribed at this criterion.
41. Consideration of the admission arrangements of nearby schools shows that the out of catchment siblings would have high priority for places at their own catchment school as well as at Lowbrook Academy. The same consideration shows that children living in the Lowbrook catchment area who could not be offered a place at the school would have low priority for places at other nearby schools as would any younger siblings.

42. On balance I find that, with a PAN of 30, the greater unfairness lies with the catchment area children and I uphold the objection.
43. I commend the school for acknowledging the other aspects of the arrangements that do not conform with the Code and quickly proposing to address them.

Determination

44. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2017 determined by the governing body for Lowbrook Academy, Maidenhead, Berkshire.
45. I have also considered the arrangements in accordance with section 88I(5). I find that there are other matters which do not conform with the requirements relating to admission arrangements.
46. 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 unless an alternative timescale is specified by the adjudicator.

Dated: 2 September 2016

Signed:

Schools Adjudicator: Phil Whiffing