

DETERMINATION

Case reference: ADA/002376

Objector: a parent

Admission Authority: The London Borough of Tower Hamlets

Date of decision: 31 August 2012

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 determined by the London Borough of Tower Hamlets.

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 community primary schools in the London Borough of Tower Hamlets in September 2013. The objection is to the oversubscription criterion concerning catchment areas. The parent believes that excluding her house from the catchment areas of Tower Hamlets is contrary to paragraph 1.14 of the Code: "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."

Jurisdiction

2. These arrangements were determined under section 88 C of the Act by the London Borough of Tower Hamlets, the local authority (LA), which is the admission authority for community primary schools. The objector submitted her objection to these determined arrangements on 2 July 2012. The School Admissions Code (the Code) at paragraph 3.5 sets 30 June as the date by which an objection can be lodged with the adjudicator. Footnote 54 directs the reader to the provision that the Schools Adjudicator has discretion to consider late referrals if was not reasonably practicable for such a referral to have been received on time. This discretion is by virtue of regulation 23 of the School Admissions (Admission and Co-ordination of Admission Arrangements) (England) Regulations 2012 which simply says that the adjudicator is not required to determine an objection unless received by 30 June. As 30 June was a Saturday I have taken the view that the requirement in paragraph 2.23 of the Code in respect of offering a school place on a specified date or the next working day should apply to this objection being

made by 30 June. 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

3. In considering this matter I have had regard to all relevant legislation and the Code.

The documents I have considered in reaching my decision include:

- a. the objector's form of objection dated 2 July 2012 and further documents;
- b. the LA's response to the objection and supporting documents;
- c. the LA's composite prospectus for parents seeking admission to schools in the area in September 2012 and 2013;
- d. maps of the area identifying relevant schools;
- e. confirmation of when consultation on the arrangements last took place;
- f. a copy of the determined arrangements; and
- g. the minutes and agenda of the LA's admission forum meetings about the consultation.

The Objection

4. The objector argues that the oversubscription criteria disadvantage families living within Hackney but close to Tower Hamlets schools. She argues that Hackney residents are disadvantaged because Hackney measures distance from home to school in a straight line but Tower Hamlets has catchment areas and measures distance by shortest walking distance. Tower Hamlets residents on the border of Hackney can apply for Hackney schools with a more likely chance of admission than can Hackney residents gain admission to a Tower Hamlets school, who, though close, are outside the catchment areas. She further argues that she was told that part of the road in which she lived (numbers 1-9) was in a Tower Hamlets catchment area, but residents of higher numbers, of which she is one, were not. She refers to paragraph: 1.14 of the Code: "Catchment areas **must** be designed so that they are reasonable and clearly defined."

Background

5. The objector lives in the London Borough of Hackney. Her home is close to the border of Bethnal Green which is an area within the London Borough of Tower Hamlets. The LA consulted on its admission arrangements during 2010 and 2011 and decided to introduce catchment areas.

The oversubscription criteria for community primary schools for admissions in

September 2013 are, in summary;

1. children looked after;
2. children with a strong medical or social need;
3. children living within the catchment who have a sibling at the school;
4. Children who live within the catchment area of the school;
5. Children who live outside of the catchment area of the school.

In the event of oversubscription within a criterion, where a distance priority is applied, that measurement is by shortest walking distance to the school.

6. When considering catchment areas, the LA included areas of other local authorities for whose residents the closest school was in Tower Hamlets. These homes are listed by address on the Tower Hamlets website.
7. The objector argues that she was told, when telephoning the LA's admissions department that residents of homes numbered 1-9 in the road in which she lived were included but her house was not. In fact, no houses in that road are included.

Consideration of Factors

The factors I have considered include the following:

Catchment areas

8. The objector draws attention when referring to the Code to the 'Greenwich' judgement as in paragraph 1.14 "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. " The judgement 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 SSFA 1998 places an equal duty on local authorities to comply with parental preference in respect of parents living within and outside their boundary.
9. However, proximity criteria are still lawful but must be on the basis of objective criteria rather than simply being one local authority area in favour of another. Tower Hamlets is entitled to use catchment areas, it has included homes from other local authorities within its school catchment areas. These homes are clearly shown on the Tower Hamlets website. I am satisfied that the catchment areas are clearly defined are reasonable, and are not contrary to the Greenwich judgement.

Measurement of Distance

10. Hackney measures distance from home to school in a straight line; Tower Hamlets has catchment areas and measures by shortest walking distance. This can and does on occasion produce a different decision about school proximity.
11. I agree that this has the potential to be confusing for parents but local authorities may choose their own means of measurement. The approach taken is clear in the LA's information for parents.
12. I agree that these admission arrangements have the potential to make it more difficult for the objector, or residents in that vicinity, to secure a place in a Tower Hamlets school. However, the LA has a duty to provide school places for its residents and has complied with the Code

Conclusion

13. The LA, following appropriate consultation, has decided to use catchment areas as part of the oversubscription criteria for primary schools. It has not limited these catchment areas within the boundary of Tower Hamlets.
14. The LA has decided to use shortest walking distance as measure within its oversubscription criteria, if necessary. It is entitled to decide how it measures distance and is not constrained in this by the decisions of a neighbouring local authority.
15. I consider that the LA is compliant with the Code in respect of its catchments areas and in measuring distance and therefore do not uphold the objection to these arrangements.
16. I am also of the view that I should draw the LA's attention to the wording of the first oversubscription criterion. When considering the oversubscription criteria for 2013 I noted that the first priority is shown as "Children looked after by the local authority (See note 1)". Note 1 expands this criterion to include children previously looked after and children who leave care under a special guardianship or residence order. Paragraph 1.7 of the Code states that the highest priority " **must** be given,....to looked after children and previously looked after children. The footnote in the Code is an explanation of the definition of looked after to include previously looked after, but parents should be able to see the first criterion as children looked after and previously looked after and not be referred to a note to see if their child is included.

Determination

17. In accordance with section 88H (4) of the School Standards and Framework

Act 1998, I do not uphold the objection to the admission arrangements determined by the London Borough of Tower hamlets.

Dated: 31August 2012

Signed:

Schools Adjudicator: Miss Jill Pullen