



DETERMINATION

Case reference: ADA2670
Objector: Dudley Metropolitan Borough Council
Admission Authority: Windsor Academy Trust
Date of decision: 19 August 2014

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 governing body of Windsor High School and Sixth Form, Halesowen on behalf of the Windsor Academy Trust.

I have also considered the arrangements in accordance with section 88I(5). I determine that there are matters as set out in this determination that 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 as quickly as possible.

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 Dudley Metropolitan Council, the local authority (the LA) for the area, in an email dated 11 June 2014 concerning the admission arrangements for September 2015 (the arrangements) for Windsor High School and Sixth Form (the school). As an academy, the admission authority for the school is the academy trust. The objection is to the naming of one local school as a feeder school in the oversubscription criteria of the arrangements.

Jurisdiction

2. These arrangements were determined under section 88C of the Act by the local governing body, as delegated by the board of the academy trust for the school. The LA submitted its objection to these determined arrangements on 11 June 2014. 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. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

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

The documents I have considered in reaching my decision include:

- a. the LA's form of objection dated 11 June 2014 and additional supporting information, received on 19 June 2014;
- b. the school's response to the objection and supporting information, dated 25 June 2014;
- c. the LA's further comments, received on 10 July 2014;
- d. the school's response to the LA's comments, received on 17 July;
- e. the school's website; and
- f. "a parents' guide to secondary school admissions 2014-15" on the LA's website.

The Objection

4. The LA in its objection refers to paragraphs 1.8 and 1.15 of the Code and to paragraph 12 of the Introduction to the Code. It objects to the inclusion in the school's oversubscription criteria, as criterion 3, of Lutley Primary School as the only named feeder school. The LA *"does not deem the admission arrangements of this school to be fair"*, which would contravene paragraph 12 of the Introduction to the Code. In citing paragraph 1.8, the LA contends that the school does not meet the requirement that *"Admission authorities must ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social ... group ..."*. Paragraph 1.15 states that *"The selection of a feeder school ... as an oversubscription criterion must be transparent and made on reasonable grounds"*, and the LA in its objection disputes that the arrangements satisfy this requirement for reasonableness.

5. The LA's objection indicates that, among primary schools in the area, socio-economic indicators for Lutley Primary School show it to be among the least socially and economically deprived. In addition, falling pupil numbers mean that all first choice applications for the school from Lutley in the 2014 round were offered a place, and that this is likely to remain the case for several years. In summary, the LA objection is that it *"would welcome an admissions policy that includes pupils from the wider catchment, including schools that have a higher proportion of pupil premium pupils. The school previously operated an admissions policy that included a priority area for those pupils where Windsor High School was the closest mainstream secondary school. Again, the Local Authority would welcome the return of this as it would ensure a more diverse intake."*

6. In comments on the school's response to the objection, the LA raised a further issue, with reference to paragraph 1.44 of the Code, as to whether the

school had followed fully requirements relating to consultation about changes to its arrangements, specifically with regard to consulting other local schools.

Other Matters

7. The school's arrangements for admission to the sixth form, as published on its website, do not comply with the Code in several respects. There is no published admission number (PAN), no reference to previously looked after children, no sufficiently detailed and clear definition of siblings and no final tie-breaker. The application form for entry to the sixth form requests some information that is not permitted by the Code.

Background

8. Windsor High School and Sixth Form is an academy for pupils aged 11 to 18 years and is a specialist sports college and training school for science and applied education. Previously a school for pupils aged 11 to 16 years, a sixth form was opened in 2010; currently, there are some 1700 pupils on the school's roll, including about 250 in the sixth form. The school converted to academy status on 1 April 2011. The Windsor Academy Trust also includes two primary schools in Walsall. The PAN for the school for admission to year 7 is 280 and, although it has been oversubscribed in recent years, the number of first preference applications for admission in September 2014 was 239.

9. The school's arrangements for 2007/08 included a criterion naming Lutley Primary School as a feeder school, with the agreement of the LA that it would monitor the impact of this criterion. Following information presented to the meeting of the LA's admissions forum on 28 February 2008, the LA objected to the continued inclusion of this criterion in the school's arrangements for 2009/10. This objection was upheld by the adjudicator on the grounds that the naming of Lutley Primary School was likely to serve more advantaged groups and to penalise less advantaged groups at a similar distance from the school.

Consideration of Factors

10. In its comments on the school's response to the objection, the LA raised a question concerning the scope and accessibility of the school's consultation on the change to its arrangements for 2015/16, that is, the subject of the objection. The LA states that *"Headteachers of local primary schools ... advised ... that no direct consultation took place with them or their families"* and that *"no reference was ever made to the 2015 consultation"* at local network meetings of headteachers. Furthermore, the LA claims, *"Headteachers learned of this through means other than direct consultation and many claim that the consultation policy was buried on the school website."*

11. However, these comments by the LA are strongly challenged by the school. The school submits that the consultation was accessible, as is evidenced by 77 responses, including from three headteachers of local primary schools, whose objections were considered when formulating the final version of the arrangements. Twelve other primary school headteachers did

not respond, nor did the headteachers of the other two secondary schools in Halesowen. It further contends that, as its own admission authority, it *“has no reason to decide its policy in conjunction with the ‘Halesowen Network’”* and that its admission arrangements were therefore never an agenda item at any network meetings, and had no need to be. This is true, and I do not find that the school contravened the essential requirements of the Code in the conduct of its consultation, although in any similar future exercise it might wish to consider how best to ensure that it is seen to follow entirely the requirements of paragraph 1.44 in the Code, notably clauses b) and c), which require admission authorities to consult with *“other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admissions”* and *“all other admission authorities within the relevant area”*.

12. My consideration of the objection must involve an overall judgement of the ‘fairness’ or ‘reasonableness’ of the school’s inclusion, by way of re-introduction, of the criterion relating to Lutley Primary School as a feeder school in its arrangements for 2015/16. I believe there are two elements to this matter: (i) to what extent it is fair or reasonable to name one feeder school, and (ii) whether the naming of the school in question is fair or transparent in respect of the characteristics of the pupil population within that school and thus the impact on the nature of the school’s intake as a whole.

13. I shall start by looking at the first of those elements. The Code, in paragraph 1.15, gives permission for the naming of one or more feeder schools but states that *“The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds.”* It is clear, therefore, that the naming of one feeder school, in itself, is not prohibited. What may be challenged, however, is the ‘transparency’ and ‘reasonableness’ of that decision, to which issue I shall turn shortly. In defending the naming of this one feeder school, the school’s response emphasises that it *“has enjoyed strong links with Lutley Primary School for a considerable period of time”* and that *“the majority of Lutley’s Year 6 cohort move up to WHS [i.e., the school]”*. Furthermore, the school argues, *“a combination of being their nearest secondary school or High School and the sibling clause within our admissions policy provides support for the strong curriculum and pastoral links that exist between the schools.”* The school also points to a geographical element in that difficulties have arisen previously with unsuccessful applications from parents of children at Lutley Primary School who live in an area that is close to the border with Worcestershire and in a ward that straddles the boundary, but for whom Windsor High School is nevertheless their closest secondary school in Dudley Metropolitan Borough and the one closely associated with their children’s primary school.

14. The school indicates that, in consulting on the proposed change to its arrangements, a significant number of replies included testimony from families which had benefitted by their children progressing from Lutley to the school, and wished to see this link strengthened and retained for future children by the inclusion of the specific feeder school criterion in the school’s arrangements. Seventy out of 77 replies to the consultation expressed support for the change. Nevertheless, although the school’s response to the objection describes this feedback from the consultation as showing a *“need”* for the link to be formalised as proposed in the arrangements, in my view it is

a wish, or a desire, however strongly and genuinely felt, rather than an absolute 'need'. That some applications from Lutley parents have been unsuccessful, while disappointing for the individuals concerned, does not of itself mean that the previous arrangements that did not name Lutley Primary School were unfair.

15. Staying for now with the issue regarding access to the school for pupils of Lutley Primary School, the school indicates that there were a number of appeals during the period 2010-13 and so suggests that progression between the two schools, seen as desirable on both sides, is under some threat. The school implies that this shows potential unfairness to applicants "*unable to gain a place at their nearest high school through the general admissions process.*" However, LA data shows that, for a number of these applicants, the school was not the nearest secondary provision and that a small number of others who failed to apply for a place by the given closing date would have been allocated a place had their application been made on time, thus reducing the number of appeals. In the 2013 admission round, 77 places at the school were allocated to Lutley Primary School pupils, from a roll of 86; this was a higher proportion than in either of the previous two years, but even so the total number of places allocated at the school was 261, almost 20 places fewer than the PAN.

16. Moreover, the school's own data, as minuted at a meeting of the local governing body on 5 December 2013, reveal that for entry to year 7 in September 2014 there were at the time 239 first preferences and 243 second preferences. A member of the school's leadership team is recorded as commenting that "*he was confident that there will be 280 acceptances ...*". Be that as it may, the preliminary figure does not indicate any difficulty for first preference applicants from any local primary school in being offered a place at the school. In the broader context of falling rolls within the area, there would not seem a need to name one primary school above all others as a feeder school in order to ensure that its pupils have a good chance of being allocated a place at the school.

17. Equally, however, these figures do not suggest that parents of children attending other primary schools are disadvantaged when applying for places, or that naming one primary school as a feeder, on the legitimate grounds discussed above, would disadvantage others in the allocation of places. On this aspect of the objection, therefore, I am of the opinion that it is not unreasonable to name a primary feeder school with which there are strong historical links and where there have been geographical issues that might cause parents anxiety in forming a view as to whether their children are likely to be offered a place at the school. Although it might lead parents with children at other schools to feel, on looking at the arrangements, that they have a reduced chance of gaining a place for their child at the school if they have not attended the named feeder school, this does not seem to me to be a genuine constraint at this time, given the school's PAN and falling rolls in the area. The PAN for Lutley Primary School is 90 and therefore even if every child were offered a place at Windsor High School there would be 190 places for other applicants. I therefore do not uphold the aspect of the objection that challenges the fairness or reasonableness of naming one feeder school.

18. Even so, the school might be open to the charge that it is trying to dissuade applications from other schools by naming just one in its oversubscription criteria. The school strongly disputes this, and puts on record that it has never attempted to select pupils by any method whatsoever. Although the LA has submitted data that shows an unusually high number of in-year transfers to Lutley Primary School during the previous period when the school named Lutley Primary School as a feeder school, the school in its response to the LA's comments rightly points out that the LA cannot know the reasons why parents make such choices. While I believe it to be a reasonable inference that some parents at least would have made the link between a named feeder school and an increased likelihood of their children being offered a place at Windsor High School through attending that named feeder, the current availability of places at the school does not make this a significant issue in my determination.

19. The previous point leads me to consider the second element of this issue, that is, the fairness or transparency of naming the feeder school in respect of the characteristics of the pupil population of that school. The LA, in its objection, suggests very strongly that the school, by naming Lutley Primary School as its only feeder, is attempting to manipulate the socio-economic makeup of its intake. The LA states: *"Lutley Primary School is located in the South of the Borough in an area of relative affluence. The percentage of pupils in receipt of free school meals at this school is only 6.1% which ranks them 12th lowest from 78 schools. The Dudley average is 19.6%. In respect of Income Deprivation Affecting Children Index, 14.1% of Lutley pupils come from the top 30% areas of deprivation nationally, whereas the Dudley average is 44.3%."* Unsurprisingly, the school disputes this interpretation of its motivation in naming the feeder school, and also queries some detail in the data put forward by the LA. The LA urges the school to return to an admissions policy that *"would ensure a more diverse intake"*, but is on less than secure ground when its own data show that another secondary school, geographically adjacent to the school against which the objection has been made, has for the past three years shown a lower overall proportion of pupils, by between 3 and 6 percentage points, eligible for free school meals.

20. It is also clear to me, using data supplied by the LA, that of the five primary schools other than the named feeder which, in the 2013 admissions round, were allocated places at the school for more than half of the number of pupils on their roll in year 6, all show a level of free school meals above the LA average quoted above, three of them significantly so. Whatever fine distinctions and disputes there may be concerning the accuracy and use of comparative data, it is my view that the school has a diverse intake. Although the pupils from Lutley Primary School may be relatively advantaged compared with others, they constitute less than a third of the total recent intake, and little more than a third of the PAN were all available places in year 7 to be allocated, including all applicants from Lutley Primary School up to its PAN.

21. With regard to this element of the objection, therefore, I do not agree that the school is contravening paragraph 1.8 of the Code in respect of disadvantaging certain groups and so I do not uphold the objection.

Other matters

22. The school's determined arrangements for entry to the sixth form are not compliant with various requirements of the Code. Paragraph 1.2 requires admission authorities to "*set an admission number for each 'relevant age group.'*" In the case of this school, the relevant age groups are entry to year 7 and to year 12, the sixth form. There is no sixth form PAN in the school's arrangements on its website. The first oversubscription criterion in the sixth form arrangements refers simply to "*looked after children*" and does not include previously looked after children; nor is there any undertaking to admit applicants with a statement of special educational need that names the school. While the arrangements for entry at age 11 detail very clearly and appropriately what 'sibling' means for the purpose of admissions, the sixth form arrangements merely use the word 'siblings' without any further definition of the term. This does not meet the requirement of paragraph 1.11 in the Code that admission authorities "*must state clearly in their arrangements what they mean by 'sibling'*". This could be remedied by simply copying, or cross-referencing, the earlier definition in the arrangements. Similarly, while the arrangements for entry at age 11 include a clear and valid tie-breaker, there is no equivalent statement in the sixth form arrangements. Paragraph 1.8 of the Code states that arrangements "*must include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.*" The sixth form application form requests information that is not allowed by paragraph 2.4 of the Code, in that it does not have "*a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability.*" Requiring applicants to give future career plans, to make a personal statement and for both applicant and parent to sign is not permissible and these elements of the application form need to be removed.

Conclusion

23. The objection draws attention to what the LA believes is a lack of fairness in the school's arrangements relating to the naming of one feeder primary school. I do not agree that the arrangements contravene the notion of 'fairness' in paragraph 12 of the Introduction to the Code or of 'transparency' or 'reasonableness' in paragraph 1.15. I do not consider that the school is attempting to manipulate the nature of its intake through naming one feeder school. I accept that the school's intention is to build further on existing valued curricular and pastoral links. I find no contravention of paragraph 1.8 of the Code and so for these reasons, I do not uphold the objection to the inclusion of criterion 3 in the school's arrangements.

24. I acknowledge a suggestion, fair or not, that the consultation on these arrangements may have been perceived as insufficiently broad or accessible by some interested parties. This perception does not mean that the school contravened paragraph 1.44 in the Code, and I have found no evidence to suggest that it did so, but it may wish to take extra care in any future consultation to ensure that all interested parties feel they have been made fully aware of the issues.

25. I have found that the arrangements for entry to the sixth form do not meet several requirements of the Code and that the application form requests information that is not necessary in applying oversubscription criteria. The sixth form arrangements need to be amended as a matter of urgency.

Determination

26. 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 governing body of Windsor High School and Sixth Form, Halesowen on behalf of the Windsor Academy Trust.

27. I have also considered the arrangements in accordance with section 88I(5). I determine that there are matters as set out in this determination that do not conform with the requirements relating to admission arrangements.

28. 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 as quickly as possible.

Dated: 19 August 2014

Signed:

Schools Adjudicator: Andrew Bennett