



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA 2882

Objector: A group of parents and the governing body of Tithe Barn Primary School

Admission Authority: Stockport Metropolitan Borough Council for Tithe Barn Primary School

Date of decision: 24 September 2015

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 Stockport Metropolitan Borough Council for Tithe Barn Primary School .

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection about the admissions arrangements (the arrangements) for September 2016 for Tithe Barn Primary School (the school) has been referred to the adjudicator by a number of parents and the governing body of the school, (the objectors) about the admission arrangements for the school, a community primary school for 4 to 11 year olds. The admission authority is Stockport Metropolitan Borough Council, the local authority, (the LA). The objection is to the priority given in the oversubscription criteria to the admission of siblings of children who are affected by catchment area changes. These children live at addresses which previously were within and now, due to the changes, are outside the catchment area.

Jurisdiction

2. These arrangements were determined under section 88C of the Act by Stockport Metropolitan Borough Council. The objectors submitted their objection to these determined arrangements on 24 May 2015. A determination was published by the Office of School Adjudicator (OSA) in November 2013 so I considered whether this objection was allowable under regulation 22 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements)

(England) Regulations 2012. Objections which cannot be brought under this regulation include “*objections to arrangements which raise the same or substantially the same matters as the adjudicator has decided on for that school in the last 2 years*”. I am of the view that this objection is different from the previous one. 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 School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
 - a) the objectors’ form of objection and supporting documents dated 24 May 2015;
 - b) the LA’s response to the objection and supporting documents dated 10 June 2015;
 - c) the LA’s composite prospectus for parents seeking admission to schools in the area in September 2016;
 - d) maps of the area identifying relevant schools and changes to catchment areas;
 - e) confirmation of when consultation on the arrangements last took place;
 - f) copies of the minutes of the meeting of the LA on 17 March 2015 at which the arrangements were determined;
 - g) further communications from the objectors and the LA;
 - h) Office of Schools Adjudicator determinations numbered ADA 1774, ADA 2084-2117, ADA 2209-2231 and ADA 2490 published on 27 July 2010, 24 September 2010, 13 October 2011 and 22 November 2013 respectively; and
 - i) a copy of the determined arrangements.

The Objection

5. The objectors consider that the arrangements are unreasonable and therefore do not comply with paragraph 1.8 of the Code which states that “*Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair and comply with all relevant legislation.*” The objection focuses on families which have been affected by changes to the school’s catchment area. The families concerned have at least one child who attends the school and these families expected their younger children to be a high priority for admission in the oversubscription criteria as in previous years. These families now live outside the new catchment area because of changes made by the LA

for admissions in 2016. In order to mitigate the impact of the catchment area alterations the LA has added a new criterion to the oversubscription criteria which relates to these children. The criterion is ranked after all catchment area children and before siblings who live outside the catchment area. It is the position of this criterion in the priority list of oversubscription criteria which the objectors say is unreasonable. The objectors say that the position of the criterion in the list of oversubscription criteria makes it “*highly unlikely*” that the younger siblings would secure a place at the school. The objectors consider this to be unreasonable and therefore not compliant with paragraph 1.8 of the Code. In addition the objectors say that the rationale for change which formed part of the consultation process and which led to the LA’s decision to amend the oversubscription criteria is flawed and, had it not been used, would have produced a more reasonable and fair set of oversubscription criteria.

Background

6. The school is a LA maintained community primary school for 4 to 11 year olds in The Heatons area of Stockport. The school has a published admission number (PAN) of 30 for admission to the reception year (YR) in September 2016. The PAN has remained unchanged for many years; the school has been heavily oversubscribed during that time. For the last three years not all children living within the catchment area have been offered a place. There are currently 214 children on the school’s roll which has a capacity of 210. The school has been the subject of a number of determinations by the Adjudicator over the past five years and these cases have included matters concerning priority for siblings and the school’s catchment area. Although the current objection also concerns siblings and catchment area the arrangements are different and I consider I should accept the objection.
7. The LA has been aware for some time that the number of pre-school children living in the broader geographical area around the school was greater than the number of places available and that new housing in the area was likely to increase demand. The LA planned to increase the capacity by building new premises. These new buildings will be operational from September 2016 and will allow another school in the area, St Thomas’ to increase its PAN from 45 to 90 for admission in September 2016 and this is expected to reduce, but not totally alleviate, the pressure on YR places in the area. Due to the increase in PAN of St Thomas’ the LA has reorganised the catchment areas and this has resulted in a reduction in size of the catchment area of the school.
8. The school is oversubscribed and, over the last few years, not all children living within the catchment area have been able to secure a place. The LA undertook a consultation between 24 November 2014 and 8 February 2015 on the proposed changes to catchment areas and to the oversubscription criteria. Following this consultation a paper was presented to the LA’s executive board on 17 March 2015.

At that meeting the arrangements for admission in September 2016 were determined and they were subsequently published as required by the Code.

9. The changed catchment area maps were also published on the LA's website and the amended oversubscription criteria for the school were published as follows, criterion e) in bold and italics is the criterion in question in this determination.
 - a. Children in Care (Looked after children and previously looked after children*)
 - b. Children considered to have highly exceptional medical/social reasons
 - c. Children who live in the catchment area of the school and will have a sibling at the school at the time of admission
 - d. Children who live in the catchment area of the school
 - e. ***Children who now live outside of the catchment area due to the changes to catchment from 2016/17, with a sibling on roll at the time of admission and fulfils one of two criteria:***
 - Sibling originally admitted to the school as a child resident within catchment area or***
 - Sibling originally admitted to the school as a sibling resident within catchment area***
 - AND***
 - The family's address has not changed since the sibling on roll was admitted to the school.***
 - f. Children who live outside the catchment area and will have a sibling at the school at the time of admission
 - g. Any other applicants in order of straight line distance measured between home and the school
 - h. Applications received after the closing date ordered by the criteria detailed at a – g above

Consideration of Factors

10. There are two parts to this objection; the reasonableness of the position of criterion e) in the oversubscription criteria and the way in which, through consultation, the LA has made the decision to implement the criterion. There are many other issues and questions which the objectors submitted in their objection paper and subsequent communications which are not within the jurisdiction of an adjudicator, including questions about the conduct of the LA. I will confine my determination to issues about which the Code sets mandatory requirements and are within my jurisdiction.
11. The Code sets out the requirements for consultation in paragraphs 1.42 to 1.45. I have studied the documents and comments relating to the consultation, its responses and the LA's comments and decisions based on these responses. There were two main elements to the consultation: the first concerned the changes to catchment areas in the area covered by 'The Heatons' which include changes to the school's catchment area; and the second concerned the families who would be "displaced" by the change in the catchment area.

12. There was a total of 659 responses to the consultation paper and 571 of these were from parents. In response to the section on the changes to the school's catchment area the governing body's written response was positive and, of the 73 responders who expressed a view on this, two thirds of them supported the changes. The governors reinforce their view in their objection which states that "*... (the LA) has approved an alteration to the catchment area ... This decision is supported by the parents who lodge this objection and the Governing Body*".
13. In relation to the families who would be 'displaced' by a change in catchment area, the consultation paper says "*the interim arrangements seek to prioritise specifically families who have been displaced out of catchment as a consequence of a rationalisation of catchment areas and have had a child already admitted under a 'resident within the catchment areas' category of the published oversubscription criteria*". There were 105 responses to this part of the consultation of which 51 per cent supported the change. The school's governing body's written response to this part of the consultation did not support the oversubscription criteria as drafted and suggested that the position of criterion e) should be above the children living in the catchment area. It notes that the increase in school places in the area and the revision in the catchment areas will reduce but not remove the pressure on school places. To illustrate this they use the LA's figures which were part of the consultation. With no changes in catchment area the number of children resident in the area who could apply for a place in YR was 59 in 2013, 37 in 2014 and 42 in 2015. Had the new catchment areas been in place the numbers would have been 37 in 2013, 28 in 2014 and 29 in 2015. The governors point out that "*even with a reduced catchment area, the level of demand for the school is such that there is a likelihood (or at least a very substantial risk) that younger siblings living in the altered area will not obtain a place at the school. This will mean that the parents who chose the catchment area school for their first child, and who have not since moved house face the prospect of having to send their children to two separate schools.*"
14. In response to these concerns the LA says that the positioning of the interim criterion ensures compliance with the latest OSA determination (ADA 2490) and that consideration had been given to the OSA annual report 2014. Specifically, from the determination, it quotes "*the disadvantage to catchment families applying for a place for their first child ... outweighs the advantage to out-of-catchment families with a sibling already at the school who have chosen a school out of their catchment area*" and from the annual report it refers to children benefitting from a higher priority for more than one school. The LA argues that "*should the interim criterion be positioned above criterion d) i.e. children who live in the catchment area of the school, then those applicants would effectively have a higher priority for more than one school as they would also be categorised as category d) for their new catchment school.*" The LA goes on to say that should this be the case then it would contravene the Code.

15. The objectors say that the LA is not bound by either the previous determination or the OSA annual report and that by following these “*blindly*” the LA has made the wrong decisions concerning the positioning of the interim criterion. In the response from the LA dated 10 June 2015 it accepts that the LA is not bound by the determination nor the contents of the OSA annual report, but it goes on to say that it had regard to the content and reasoning of the determination. It also says that the reference in the OSA report is relevant and clear and was therefore considered as part of the process.
16. The objectors are correct that the LA is not bound for evermore by previous determinations because a determination is specific to the context at the time. The previous determination was written at a time when the catchment area and the PAN were not fit for purpose and there was a lack of spare capacity to be able to offer parents a realistic preference of primary school. It is also true that the LA is not bound by the OSA report which is a reflection of the matters brought to the attention of the Chief Adjudicator in the previous year. However, it is sensible for admission authorities to note relevant decisions and the findings about admission arrangements. I therefore accept that it was reasonable for the LA to make reference to both the determination and the OSA report in their consultation process.
17. The main focus of the objection is the reasonableness of the position of criterion e) in the oversubscription criteria. The objectors say that this contravenes paragraph 1.8 of the Code. The objectors believe that the position is unreasonable because there is a distinct possibility that siblings who now live out of catchment because of the changes will not be offered a place. The LA believes that the detriment to catchment area children who are unsuccessful because of the admission of any “displaced” siblings is more significant than the unsuccessful applications for displaced siblings who would be within the catchment of another school.
18. I understand both viewpoints. Any family who is unsuccessful in its application for a preferred school place, particularly as in this case where the child might have expected to have a high priority, but no longer has exactly that level of priority is likely to feel the arrangements are unreasonable.
19. I have considered the place of siblings in the oversubscription criteria and the impact on all of the position of the interim criterion. In previous Codes there was a distinct encouragement for admission arrangements to prioritise siblings so that children of the same family could attend the same school. The current Code makes it clear that it is for admission authorities to formulate their arrangements which must be reasonable, clear, objective, procedurally fair and comply with the law. In the paragraph on siblings the Code requires admission authorities to clearly define siblings and to be clear about their priority. It does not encourage or discourage authorities from including sibling priority in their arrangements.

20. The arrangements give priority to siblings of children living in the catchment area before other children in the catchment area. The change to the catchment area, supported by the school, is for children to have priority for their catchment area school. As the catchment area has been changed, siblings of children at the school who were living in the catchment area when they first joined the school and who still live at the same address have priority over other siblings who live outside the catchment area. The arrangements give considerable priority to siblings and the position of those who are no longer in the catchment area has been given consideration.
21. In order to consider the impact of the position of the interim criterion I requested information from the school and the LA about the number of children who currently attend the school and who live in the roads which are now not in the catchment area of the school. There are 557 properties which are now out of the school's catchment area.
22. The school reports that there will be 38 children across all year groups attending the school in September 2015 who lived in the catchment area when they were admitted who have not moved home, but now live outside the area because of the changes. The LA's figure is 39 and is based on children on roll in the academic year 2014/15. In order to assess the impact it is necessary to know how many of these children have siblings below school age. The governors report that they undertook to find out this information earlier in the year by asking staff which families had younger children. They identified two families each with one child and provided me with details of the children, their current year group in the school and the age of the siblings. With the caveat that further children may be born to other displaced families the governors concluded that only two children will be displaced.
23. The LA trawled their data systems and reported that there are 11 siblings below school age in the altered catchment area but in a later communication stated that this is the total number of siblings of children on roll in the school. They, too, report the caveat that other children may be born. They make the point that families may move away from the area and that data held in the Early Years Foundation Stage (EYFS) database is limited by the number of parents who have chosen to engage in such provision. It is not possible to be absolutely certain of the number of siblings in the altered catchment who may be affected by the change in the arrangements, but the data from the school and LA suggest that the number is relatively small. This is no consolation for those families who are affected, but when a school is oversubscribed there will always be those who would like a place for their child, but are not allocated one.
24. The objectors argue that the siblings of children at the school who still live at the same address should have priority above children in the catchment area. Since the whole aim of changing the catchment area was to try to ensure that children in the catchment area would have priority for their catchment area school then to continue to give priority to children from outside the catchment area would undermine the

purpose of the change that has been made.

25. I have considered all the papers submitted to me by the objectors and by the LA. I am of the view that the LA conducted the consultation and then determined the arrangements as required by the Code. All parties agree that while the pressure on places at the school has been eased it is only a partial solution; new housing in the area and demographic changes may result in continued oversubscription for the school. The indications are that in 2016 applicants who have priority within oversubscription criteria a, b and c will gain entry to the school. Children with priority against criteria d and e may be successful depending on the numbers who apply, but may not gain entry to the school. If a child in the catchment area (criterion d) is not successful then he or she will be offered a place at the nearest available school with places which may be a considerable distance away. If a child out of catchment (criteria e and f) is unsuccessful then he or she also has priority for a place at their catchment school along with other local children. This would be a different school from one attended by an older sibling if they live in the altered area, but nevertheless a local school. I believe that it is reasonable to give priority to children living in the catchment before the siblings of children living in the altered area. I conclude, therefore, that the placement of the new criterion for siblings living in the altered area is reasonable and fair and that the oversubscription criteria are compliant with paragraph 1.8 of the Code. I therefore do not uphold the objection.

Conclusion

26. I have concluded that the LA has complied with the Code in terms of consultation and determination of the arrangements. I have not been persuaded that the placement of the new criterion in the oversubscription criteria which covers the siblings of children who are currently at the school and who live in the altered area is unreasonable. I am of the view that it is reasonable when assessing priority for admission between a child living in the catchment and the sibling of a child at school, but who is now not in catchment, the priority should be for the child in the catchment area. The sibling out of the school's catchment area has a priority for a local catchment school which will be near to home and be attended by other local children, but the child in the school's catchment area but not allocated a place does not have this priority. If the child in the school's catchment area is unsuccessful they will be placed in the nearest school with places which may be some distance away and with children from a different area. I consider it reasonable to give priority to the child living in the catchment area. I therefore conclude that the oversubscription criteria are reasonable and do not contravene paragraph 1.8 of the Code.

Determination

27. 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 Stockport Metropolitan Borough Council for Tithe Barn Primary School .

Dated: 24 September 2015

Signed:

Schools Adjudicator: Ann Talboys