



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3318

Objector: An individual

Admission Authority: The Governing Body of Henrietta Barnett School, Barnet, London

Date of decision: 30 August 2017

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 2018 determined by the Governing Body for Henrietta Barnett School, Barnet.

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 an individual, (the objector), about the admission arrangements (the arrangements) for Henrietta Barnett School (the school) a selective academy school for girls aged 11 to 18, for September 2018. The objection is to the absence in the oversubscription criteria within the admission arrangements of any reference to defined catchment area.
2. The local authority for the area in which the school is located is the London Borough of Barnet. The local authority is a party to this objection. Other parties to the objection are the governing body of the school and the objector.

Jurisdiction

3. 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 academy 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 objector submitted his objection to these determined arrangements on 14 May 2017. The objector has asked to have his identity kept from the other parties and has 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 his name and address to me. 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. the objector's form of objection dated 14 May 2017, supporting documents and subsequent correspondence;
 - b. the school's response to the objection, supporting documents and subsequent correspondence;
 - c. the response of the local authority to the objection and supporting documents;
 - d. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2017;
 - e. a map 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 objector considers that the absence of any criterion in the admission arrangements concerning the distance an applicant lives from the school contravenes paragraph 1.8 of the Code. This states that *"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"*. The objector believes the school's *"lack of rules around application distance results in excessive/disproportionate admittance of pupils, and creates multiple unfairnesses and inequalities for children and families living in areas close to it; whilst benefitting families elsewhere who have no such issues"*. The objector considers the arrangements to be unreasonable and compares the average distance travelled by pupils at the school with distances pupils travel to other schools. He considers the arrangements unfair to the children living in the school's immediate postcode area and suggests that the arrangements have social and financial impact on local families. The objector suggests that the arrangements are unfair because local children have to travel further to school as a consequence. The objector suggests that the admission arrangements are not objective and suggests that the

oversubscription criteria are influenced by the school's desire to increase its own standing and reputation. He questions whether or not the school adheres to the school's founder's wishes in terms of distance and background and questions the assertion and relevance of the school's statement that 48 percent of pupils live in North London.

7. I have considered the objection under paragraph 1.8 of the Code. As the objector considers the arrangements to be unfair I have also considered them under paragraph 14 of the code which states that *"In drawing up their admission arrangements, admission authorities **must** ensure that the practices and criteria used to decide the allocation of school places is fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated"*.

8. The objector makes the following assertions about the impact of the arrangements and their non-compliance with the Code each of which he illustrates with data and analysis:

- the average distance travelled from home to school by the school's pupils is over 8.3 kilometres which is by far the furthest distance out of all the 177 non-faith secondary schools in the whole of London. The objector states that this average distance is increasing each year. He voices the opinion that these distances are excessive and disproportionate and this makes the admission arrangements unreasonable;
- as a consequence of the distances travelled by pupils at the school, local children have to compete against a very large number of other applicants. The objector has divided publicly funded secondary school pupil volumes by publicly funded primary school pupil volumes in each Lower Layer Super Output Area (LSOA) in North London and presented a map showing the areas in which the numbers are balanced and not balanced. In the objector's view, the map shows that the school's immediate geographical area is one in which the need for publicly funded secondary school places is not well met. He argues that the majority of the areas from which the pupils at the school are drawn are within areas where there is already a good balance between primary and secondary school places and sufficient places for primary pupils to transfer to secondary. The objector considers this makes the admission arrangements unfair;
- the objector extrapolates the issue of available places explained in the paragraph above and suggests that a direct consequence of this is that a much larger proportion of families from the school's area *"must feel forced to either move house, or find funds for a private school once their children's primary education comes to an end"*. He considers this unfair;
- figures drawn from the LSOA areas show that children living in the school's immediate area travel further to attend a publicly funded secondary school than those living elsewhere in London and

suggests that this is unfair on those pupils who live near to the school;

- the objector gives the dictionary definition of '*objective*' as "*not influenced by personal feelings or opinions in considering and representing facts; impartial, detached*". He suggests that the oversubscription criteria are the "*antithesis*" of this definition. He bases this on a local newspaper article which quotes the headteacher of the school and the reasons she did not believe that a priority catchment area should be introduced. In the article the headteacher is quoted as saying the admission arrangements are based on the school's founder's wishes, that the school wants to be able to offer places to girls of all backgrounds and that 48% of the current pupils live in North London. The objector quotes from the founder's biographies and suggests that the school was set up to serve the local community. He compares the socio-demographic data from the current area from which pupils travel to the school with a smaller area of 5 kilometres from the school. These data include ethnicity, religion, country of birth, language, benefits, single parent households, employment, qualifications, health and deprivation scores. The data show that there is very little difference in any of these elements when comparing the two areas and therefore if the school had a smaller, defined catchment area the pupil backgrounds would be very similar to those of current pupils. The objector suggests that the headteacher's statement that 48 per cent of pupils living in North London does not provide support for local areas; he says that North London is "*a huge place*" and that to say that less than half the current pupils reside there is an argument to put a priority area in place; and
- the objector suggests that a "sensible" priority for families living closer to the school would bring the school in line both with the Code and with almost all other similar schools without undermining its core selective based policy.

Background

9. The school is a selective academy school for girls and has a Published Admission Number (PAN) of 93. It was founded in 1911 and is a non-denominational grammar school for girls aged 11 to 18. It converted to academy status in April 2012. There are 745 girls on roll and a Department for Education (DfE) calculated capacity of 779. The school has not been inspected by Ofsted since 2007, at which time it was judged to be outstanding in every aspect. Admission to Year 7 (Y7) is by testing for selection. At the start of the school year before entry, applicants sit a first round entrance test in verbal and numerical reasoning; the highest ranked 300 candidates are then invited to take a second round test in English and mathematics. The results of the second round test are combined with those from the first round, then standardised and placed in rank order before being submitted to the local authority, which offers the appropriate number of places to the highest ranked candidates in accordance with parental preferences. Looked after and previously looked after children followed by 20 girls in receipt of pupil premium

are then given priority as long as they have reached the required standard by being ranked in the top 300. If two or more girls are equally ranked then priority is given to the girl who lives nearest to the school. In order to facilitate decisions regarding applications to other schools prior to the deadline for submitting the local authority's common application form (CAF), parents of candidates are informed during the October following the first round tests whether the candidate has achieved a score which meets the standard required to be eligible for consideration for admission to the school, or whether she will not be invited to sit the second round test.

10. The school is heavily oversubscribed. Against the PAN of 93 for entry in September 2017, 2334 applicants completed the first round test; the local authority states that the school received 422 applications, of which 235 were first preferences.

11. The governing body last consulted on changes to the admission arrangements from December 2016 to January 2017. This consultation was for the September 2018 admission arrangements and made changes to bring the arrangements in line with a previous determination by a school adjudicator.

12. The arrangements for September 2018 were determined by the Governing Body on 1 February 2017 and subsequently published on the school's website in line with the Code.

Consideration of Case

13. Paragraphs 1.18 and 1.19 of the Code refer to Grammar schools. They state that *"Only designated Grammar schools are permitted to select their entire intake on the basis of high academic ability. They do not have to fill all of their places if applicants have not reached the required standard"* and *"Where arrangements for pupils are wholly based on selection by reference to ability and provide for only those pupils who score highest in any selection test to be admitted no priority needs to be given to looked after children or previously looked after children"*. The school is a designated grammar school and therefore is allowed to select its entire intake on the basis of high academic ability. It is important to note that the objector does not suggest that the school should not have selective admission arrangements and, indeed, such an objection could not lawfully be made. As paragraph 3.3 of the Code makes clear:

"The following types of objections cannot be brought:

a) objections that seek to remove selective arrangements at a maintained schoolor a selective Academy..."

Rather, my understanding is that the objector considers that a higher priority should be given to girls of high academic ability who live nearer to the school than those who live further away. This compares with the arrangements which – with the exception of the provisions relating to looked after and previously looked after girls, and some girls in receipt of the pupil premium - are based solely on scores in the school's selective tests.

14. The school and the local authority provided responses to the objection. The objector responded to each of these. The school states that it is proud that it admits solely on academic selection through entrance tests. It argues that by not restricting the area from which girls can be considered for a place by giving priority to those who live closest to the school it caters for the most academically able from a wide area. It is proud that it admits pupils regardless of economic background, culture, ethnicity or religion.

15. The local authority acknowledges the very lengthy and illustrative report from the objector but makes the point that in relation to the key objection, that the arrangements are unfair as there is no geographical based oversubscription criterion, the arrangements do comply with paragraphs 1.18 and 1.19 of the Code. The objector replied that he agrees with this statement. He says that he has no issue with the school's compliance to the admission Code under these paragraphs and that his objection relates to paragraph 1.8.

16. All parties are correct in that the Code does not require a school to have a catchment area at all or – in the alternative - to give priority to those children who live closest to the school. I draw a distinction between these two approaches and note that a catchment and priority on distance from the school are two very different things. As catchment areas are frequently not drawn as circles with the school in the middle, a catchment area will often give priority to some children who live further away from a school than others who live nearer to it. By contrast, priority on the basis of distance is just that – though there may be different approaches taken to measuring distance such as straight line or walking route. In any event, I have considered this objection against the requirements of paragraph 1.8 oversubscription criteria must be reasonable, clear objective and procedurally fair and paragraph and 14 of the Code that admission arrangements must be clear, fair and objective.

17. The school and the local authority considers the comparison which the objector makes between the school and all other non-faith schools in London is unfair and they suggest that a more reasonable comparison would be with other, similar, grammar schools. The objector responds that there is only one other grammar school with a London postcode; The Latymer School. He goes on to compare the distances pupils travel and concludes that the school's average distance of travel is 60 per cent greater than the Latymer's. The objector acknowledges that there are over 20 similar schools in the wider area surrounding London but says that these cannot be compared equally due to the large differences in surrounding population density. The school suggests a comparison with the other grammar school in the local authority would be fair; this is Queen Elizabeth's Boys' School in the same borough as the school but with a Hertfordshire postcode. In fact, I observe that Queen Elizabeth Boys' has an EN postcode. EN postcodes include the London Borough of Enfield and part of Hertfordshire. Boys attending this school on average travel further than girls attending the school which is the subject of this determination. The objector considers this comparison not valid as an out of London postcode implies a more rural area with significantly lower population density. He does, however, include the school in another comparison; the number of applicants per available space. Over 2000 girls were tested in the first round of selection at the school; with a PAN of 93 this means that there is approximately a one in twenty five chance of admission at the school.

Statistics from the other schools in London and surrounding areas, including the boys' grammar school in the local authority indicate that there is a greater likelihood of admission with Queen Elizabeth and Latymer schools showing that there is a one in eleven chance of a successful application.

18. The local authority report that 20 percent of the school 2016-7 Y7 cohort live within three miles of the school and that 30 percent live in North London. The school states that 48 per cent of all pupils live in North London. The objector suggests that the difference in these figures is due to families moving into the area after the child is admitted.

19. It is clear from the data that, on average, girls travel a considerable distance to attend the school. It is also clear that boys attending the nearest grammar school for boys, on average, travel further. This may be due to the population density differences in the two areas from which the pupils are drawn. The Code and the law do not require schools to draw their pupils from a specific area and there is no requirement to provide places for the most local children. In this respect the admission arrangements comply with the Code. It is also clear that drawing girls from a large geographical area must, inevitably, leave fewer places for girls living near to the school.

20. The local authority reports that 65 per cent of parents living in NW11 (the school's postcode), secured a place at their first preference school which, it says, is in line with the borough's average of 68.7 per cent. It goes on to agree with the objector that NW11 has a higher than average percentage of parents electing for private education compared to other areas. It suggests that this may be partly because it is a highly affluent part of the borough and also due to the fact that there is a large Orthodox Jewish community in the area and a disproportionately high demand for Orthodox Jewish school places. If this demand cannot be met many Orthodox Jewish parents prefer to educate their children privately rather than accept the offer of a non-Jewish school. It goes on to say that NW11 is a priority postcode for a local academy and that although the vast majority of NW11 applicants select faith school preferences, there are sufficient non-faith school places within two miles of the NW11 area. The objector explains that his calculations are based on the number of children moving through the publicly funded system and therefore those children who are privately educated in all schools are not factored into his analysis. He goes on to show, on maps, that the specific Orthodox Jewish community referred to by the local authority is based in only a small part of the affected area around the school. The objector goes on to say that feeder places at the local academy (The Archer Academy) are limited and that no NW11 children obtain any further places at the local academy through geographical criteria as NW11 is too far away.

21. All parties refer to a 'flyer' which was distributed to homes in the area during the most recent consultation on admission arrangements. The flyer suggests that *"if you would like to see criteria put in place that are more in line with other schools such as a catchment area or other priority for children living close by, please let them know –they are welcoming your views"*. The flyer then provides the closing date of the consultation and the address for responses. The school and the local authority describe this flyer as *"misleading"*; the objector suggests that all the information in the flyer is

accurate.

22. The consultation proposals for the September 2018 arrangements made no mention of the introduction of a catchment area to the school. The flyer which was circulated encouraged families to suggest this to the school. The governing body minutes of the 1 February 2017 report that of the 224 responses to the consultation, 208 wrote in favour of a catchment area. The governing body discussed these responses and decided that in order to maintain the school's ethos of being open to all it would not be considering the introduction of a catchment area.

23. The arrangements describe the admission processes clearly with dates and requirements set out so that parents can follow them easily and fully understand the procedures. They adhere to the school's ethos of providing education for academically able girls from all backgrounds. The admission arrangements include oversubscription criteria which give priority to looked after and previously looked after girls and then to 20 girls who are in receipt of pupil premium funding, provided that these girls achieve the minimum academic standard required. I am of the view that the oversubscription criteria are clear, objective and procedurally fair in line with paragraph 1.8 and that the arrangements are clear and objective as required by paragraph 14 of the Code. I also consider that parents are able to look at the arrangements and understand easily how places are allocated in line with paragraph 14 of the Code. I do not accept the objector's arguments about objectivity. In the context of school admissions, objectivity means that the arrangements can be applied to a set of applicants without the need for any subjective assessment or value judgements. That test is satisfied here. As paragraph 1.10 of the Code makes clear, it is for admission authorities to determine the oversubscription criteria which they think would be most suitable to the school. Admission authorities cannot in this sense be "detached" from the arrangements. It is reasonable and to be expected that a school's arrangements will reflect its ethos as is commonly seen in the faith-based arrangements of schools with a religious character. Here the clearly expressed ethos is to provide for able girls from a relatively wide geographical area.

24. This leaves the element of paragraph 1.8 which requires admission arrangements to be reasonable and the element of paragraph 14 which requires the arrangements to be fair. The objector clearly believes that they are not reasonable or fair and the school disagrees. Arrangements for an oversubscribed school will inevitably result in a group of parents who are disappointed that their child does not gain admission. These parents will often feel that the admission arrangements are unreasonable or unfair. In this case the objector feels the arrangements are unreasonable because the school takes girls from a considerable distance and unfair because of the impact the arrangements have on children living near to the school.

25. The school is the only secondary school in this postcode. Therefore all boys of secondary age wishing to go to a publicly funded school have to go to schools in other postcodes. The majority of the girls are in a similar position with only approximately 20 girls from NW11 being admitted to the school each year. Moreover, as the school is a designated grammar school, it could not in

any event provide for those girls living nearer to it who are not of high academic ability.

26. The level of oversubscription in the school is very large; over 2000 girls took the initial test for entry in 2017. Girls do travel some distance to the school and this may be greater than for most other schools but this is the families' choice and they are obviously keen to do so. The families therefore must believe that the distances travelled are reasonable otherwise they would not apply. The arrangements which allow this to happen are therefore reasonable for those families. The school says that the arrangements adhere to the ethos of the school and provide opportunities for very able girls from a range of backgrounds to attend the school. The school accepts the most able girls who apply without reference to distance from the school. The arrangements conform with the Code in respect of the requirements for grammar schools.

27. It could well be unreasonable and unfair if the admission arrangements for the school led to the absence of viable alternative schools for some children who might be eligible for a place at that school – in this case girls of high academic ability. The local authority suggest that there are sufficient places within a reasonable distance for all pupils living in NW11. I have considered these alternatives. I have looked at the secondary schools within a three mile radius of the school. This distance is one considered by many local authorities as a reasonable distance for pupils to travel to secondary school and is, of course, the distance beyond which free school transport must be provided if no suitable school place is available nearer to a child's home. There are 33 secondary schools within a three mile radius of the school according to the Department for Education (DfE) website. Of these, ten are designated with a religious affiliation. Of the remaining 23 all but three of them have been judged to be good or outstanding at their last Ofsted inspection. The local authority suggests that three schools within two miles of the school have sufficient places for pupils from the school's postcode. One of these, The Archer Academy, prioritises some pupils from NW11 in its oversubscription criteria. This school was judged to be providing a good education for its pupils in its last Ofsted inspection in June 2015. The other two schools are Hendon School, judged to be providing an outstanding education by Ofsted in November 2011 and Whitefield School which was judged to be good in January 2014.

28. I am of the view that there are sufficient places in schools which do not have a religious affiliation and are within a reasonable distance from the postcode for parents to be able to make reasonable choices. There is no evidence – and none of the parties has suggested – that between them these schools cannot meet the needs of girls of high academic ability. The school is small compared with the majority of secondary schools with a PAN of 93. The impact on the local area of the school admitting the most able from an unlimited geographical area is consequently also small. With alternatives available I do not consider that the admission arrangements for this school are unreasonable or unfair and I do not therefore uphold this objection.

Summary of Findings

29. The school is a highly selective girls' school and selects its entire intake on the basis of high academic ability and in this respect it conforms with the Code. The admissions arrangements do not make reference to geographical distance from the school and there is no requirements for it to do so in the Code. The objector considers the absence of a catchment area to be non-compliant with paragraph 1.8 of the Code and unfair (paragraph 14 of the Code).

30. I have considered the elements of paragraph 1.8 and 14 and have concluded that the arrangements as published are clear, objective and procedurally fair. The school is heavily oversubscribed demonstrating that families believe that the distances travelled are reasonable and the arrangements reflect the school's ethos which is also reasonable. In light of the availability of appropriate places at secondary schools within a reasonable distance I consider that parents do have acceptable choices for their children's secondary education and I therefore do not consider that the arrangements for the school are unfair. I therefore do not uphold the objection.

Determination

31. 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 2018 determined by the Governing Body for Henrietta Barnett School, Barnet, London.

Dated: 30 August 2017

Signed:

Schools Adjudicator: Ann Talboys