

DETERMINATION

Case reference: ADA/002083

Objector: eligible parents

Admission Authority: Darlington Borough Council

Date of decision: 14 December 2010

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements determined by Darlington Borough Council for September 2011

In addition to considering the referral, I have also considered the admission arrangements as a whole in accordance with section 88J of the School Standards and Framework Act 1998, and whether any changes should be made to them. I find that these do not conform with the requirements relating to admission arrangements.

I determine that for admissions in September 2011 the arrangements shall remain unaltered.

The referral

1. An objection has been referred to the Adjudicator under section 88H(2) of the Act by eligible parents about the admission arrangements (the arrangements) for Darlington Community primary schools (the schools), determined by Darlington Borough Council (the Council), for September 2011.

2. The objectors allege that the arrangements are unfair in that they result in parents in parts of the area served by the Council being unable to secure a place at any nearby school in the Borough.

Jurisdiction

3. These arrangements were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the LA, which is the admissions authority for the schools. The parents submitted their objections to these determined arrangements on 6 August 2010 and therefore not within the time limit prescribed for an objection in accordance with section 88H of the Act. However, it appears to me that the matters brought to my attention may mean that the arrangements do not comply with the mandatory requirements. I am therefore considering these arrangements in accordance with my powers under section 88I of the Act. I have considered whether to use my powers under section 88J of the Act to make changes to the admission arrangements for the Schools but have decided not to do so.

Procedure

4. In considering this matter I have had regard to all relevant legislation, guidance and the School Admissions Code.

5. The documents I have considered in reaching my decision include:

the parental letter of objection of 6 August 2010;

the LA's response to the objection;

subsequent correspondence with both the objectors and the Council;

the Council's booklets for parents seeking admission to schools in the area in September 2010 and in September 2011;

maps of the area identifying relevant schools.

6. I have also taken account of information received during a meeting I convened on 22 November 2010 at the Council's offices which was attended by the objectors and by officers of the Council.

The Objection

7. The objectors have used information about the pattern of admissions in September 2010, provided to them by the Council (and now published in its brochure for parents for 2011/12) to create maps of Darlington Borough as a whole which illustrate the effective admission radii in September 2010 of schools which serve the areas outside the town itself.

8. Drawing upon these maps, they state that they show that for rural areas of the Borough, the oversubscription criteria operated by the Council mean that in practice parents living there can never hope to obtain a place at any nearby school. This effect is brought about in particular by the reliance within these criteria on a straightforward measurement of distance from parental homes to oversubscribed schools in order to decide which children shall be admitted. Whatever their parents' expressed preference, the objectors state that the affected children are assigned a place at another school, which is the nearest school that still has vacancies, wherever this is.

9. They therefore contend that the Council is failing to meet a number of obligations, some of them statutory in nature, within the Code. They allege that:

(i) the requirement to take into account the time taken to travel to school, the safety of the route, the need to encourage cycling and walking and the availability of public transport when drawing up oversubscription criteria (paragraph 2.36) has been breached;

(ii) the statement in paragraph 2.37 that when distance is used as an oversubscription criterion "it has the benefit of ensuring that children will not have a disproportionate journey to school if access to their nearest school is not possible" is being disregarded;

(iii) the statement of good practice in paragraph 2.38, that priority should be afforded to children where either public transport constraints or inability to access the nearest school would otherwise mean they had disproportionate journey times, is being ignored;

(iv) the requirement in paragraph 2.39 that admission authorities must take into account factors that might unfairly disadvantage one child compared to another is being breached;

(v) the requirement that when distance is used as a criterion, admission authorities must provide a map and indicate to what extent parents within those areas have succeeded in getting places in the past and whether that is likely to be a guide for the future is being breached (paragraph 2.45).

Background and Consideration of Factors

10. The objectors, who live on the outskirts of the Darlington conurbation, applied for a place for their child for September 2010 at their three nearest primary schools in the Borough.

11. Each of these applications was unsuccessful, and a place was allocated at a school 4 miles from their home. The parents appealed against the refusal of a place at their nearest school, were again unsuccessful and submitted a complaint to the Local Government Ombudsman. The latter told the objectors that jurisdiction concerning school admission arrangements rests with the Schools Adjudicator, but by the time they submitted their objection the deadline of 31 July for such objections to be lodged had been passed. The objectors, who were able to secure a place for their child at a school in neighbouring County Durham for September 2010, stated that they nevertheless wished their objection to be considered on behalf of other families who would be in the same position as they had been when seeking places for September 2011, since the Council's arrangements were unchanged from those which had applied for 2010. For the reasons set out above, I do not have jurisdiction to consider the objection under s88H but have decided to consider the arrangements using my powers under section 88I.

12. Darlington has a total of 29 primary schools which admit Year R pupils, providing a total of just over 1200 places per year. The great majority of these schools are located in and serve the Darlington conurbation, with 5 schools located towards the geographical boundaries of the Borough, providing 145 places annually.

13. As part of its admission arrangements for community and voluntary controlled primary schools, the Council applies the following oversubscription criteria, where required:

- (i) Looked After Children
- (ii) Medical Reasons
- (iii) Family Links
- (iv) Associated Schools (in the case of linked infant and junior schools)
- (v) Distance

Each of these is given an appropriate definition as part of the arrangements.

14. The Council made its initial response to the objection on 23 August 2010, stating that it believed its policy and procedures to be in line with the statutory requirements of the Code. It told me that its consultation over admission arrangements "takes into

account the geographical context of the Borough” but no catchment areas are designated. Its letter referred me to the information in its 2010 brochure for parents showing the distance from which the last child was offered a place at oversubscribed schools in the Borough in September 2009. For High Coniscliffe, the school nearest to the objectors’ home, this had been just under 4 miles, and just over 3 miles in the previous year. No school listed showed that children had been admitted from an excessive distance. However, information concerning schools that are not oversubscribed is not provided. The Council told me that transport is provided for some children under the age of 8 where public transport is not available, with journey times of up to 25 minutes.

15. In February 2010 two Federated (infant and junior) schools which are located away from the centre of Darlington itself and which have been oversubscribed in recent years, admitting from a furthest distance of less than a mile in 2009, had approached the Local Admissions Forum requesting that designated areas be established for the purposes of admissions. This request had been resisted by the Council on the grounds that providing catchment areas “for more affluent localities would inevitably disadvantage” others. It felt that its arrangements were fair and equitable and served it well. The Forum had agreed with the Council. The infant school in question was one of the preferences expressed by the objectors, who did not obtain a place there in September 2010. Had the Council been minded to establish relevantly defined catchment areas for this and for other schools, it would have been possible to prevent the situation complained about by the objectors and which exists, as we shall see, for those in similar circumstances to them.

16. In response to the Council’s statement, the objectors expressed surprise at these comments, in particular that the Council could claim to have “taken geographical context into account” in fixing its admission arrangements since the evidence pointed to the fact that these were resulting in children being transported, at extremely high cost to the authority. The comment concerning catchment areas and advantage or disadvantage to affluent areas was irrelevant in their view since the issue which they had raised was about the effect of the Council’s policies in different geographical locations irrespective of wealth or social status.

17. I wrote to the Council on 17 September seeking

(i) confirmation that all parents in the Borough seeking a place at a primary school in September 2010 were offered a suitable school, with assistance in the form of transport where necessary;

(ii) information about the primary schools attended by those living in the remotest locations in the Borough, which I subsequently agreed could be provided in the form of detailed information about the children admitted to primary school for the first time in September 2010 whose parents could not be offered any of their preferred schools.

18. The Council wrote to me on 20 October providing details of the arrangements made for the September 2010 admission cohort in order to ensure the provision of suitable schooling. This information was helpfully illustrated with maps showing the location of the homes of the 63 children not offered a place at any of their preferred schools and indicating the location of the school place provided. There were 40 such children living in central Darlington, 39 of whom were offered alternative places within 2 miles of their home and the remaining child was offered assistance with transport.

19. The 23 children living outside central Darlington consisted of three groups. One was a group of 6 families living in an urbanised area in the north of the Borough which is part of a larger conurbation located mostly in a neighbouring authority. These 6 children, for whom the nearest school was Heighington CE primary school (about a mile away from their homes, which are close together), were being provided school places at an approximate distance of 9 miles, at another of the five rurally located primary schools in the Borough, with transport provided. A second group, which included the objectors, consisted of 10 families living on the edge of Darlington for whom the nearest school was High Coniscliffe CE primary school, also located outside central Darlington and about 1.75 miles from the group of homes, whose alternative school initially offered was 4 miles distant. Following appeals by the parents, places were offered slightly nearer, at a school where places had become available in the intervening period. Finally, a third group of 7 families living in the area to the south east whose nearest schools were St George's CE (Aided) primary or Hurworth primary were offered a place at a school which was between 2.5 and 10 miles from their home.

20. In other words, 4 of the 5 rurally located primary schools are oversubscribed and a significant number of children in relation to the number of places they provide (23 children compared to a total of 130 places annually) who live very near to them could not be offered a place any of their preferred schools in 2010. In the case of the objectors their three preferred school had all been at distances of less than approximately 2 miles from their home.

21. I met the objectors and officers of the Council on 22 November 2010. The former confirmed the reasons behind their objection, and the Council that the 2010 pattern of admissions had not been an aberration. Children from previous cohorts were also being transported similar distances to receive primary education. Although there was difficulty concerning the likely accuracy of the future pupil projections which were available (since these were based on data known to be accurate at the last census in 2001, but now out of date) I was nevertheless told that there was a clear rising trend in the size of the cohorts passing through nursery and entering Year R. The process of providing choice advice about September 2011 admissions was already well in train, and it would be very problematic if there were now to be any changes in the arrangements for that date. The process of consulting on arrangements for 2012 admissions had already begun.

22. In giving consideration to the objection and the evidence which has been placed before me, I have been concerned first to satisfy myself that it is possible to obtain a clear picture of what is happening in the pattern of primary school admissions in the Borough, and secondly whether this picture is a relatively stable one from year to year. As I have said, the Council has confirmed that the situation described above for 2010 is part of a longer trend. This same picture also emerges in the data on furthest admissions which the Council provides in its booklet for parents. This information shows fairly conclusively in my view that over the last three years, schools in the Borough for which data is presented (the oversubscribed schools) have had small (often less than a mile), and generally contracting, furthest admission distances.

23. What this tells me is that what the objectors have described and complained about is a reality. For parts of the Borough (essentially the areas outside the main conurbation but not sufficiently close to one of the small number of schools which serve them) it is clearly the case that parents have no realistic chance of obtaining a place at any nearby school unless there is an older sibling already in attendance. Unless they also happen to live within a reasonable distance of a school which has vacancies, children will be

allocated places at schools many miles from their home, concerning which they may well have had no say, and provided with transport. With a rising trend in cohort sizes, this position is getting worse, not better.

24. I now turn to the specific complaints made by the objectors concerning non-compliance with the Code. Paragraph 2.36 of the Code places a non-mandatory requirement on authorities to take into account the time it will take to travel to school, as well as the safety of the route, the need to encourage cycling and walking and the availability of public transport when determining its admission arrangements. Authorities must comply with this requirement unless they have good reason not to, and although the travel times I have been given for children attending schools at some distance from their home in the Borough are not in themselves greatly excessive, the requirement here is clearly intended to ensure that arrangements are such that children can, to the extent that this might be possible, attend schools that are closer to rather than further away from their homes. I do not believe that the Council's justification given in paragraph 15 above for continuing arrangements that are systematically resulting in primary schooling being provided for some children at a considerable distance from their homes in order, it would seem, that others should be able to have a place at a school even nearer to their home, constitutes any such good reason. I am in agreement with the objectors that the Council is in breach of this aspect of the Code.

25. Paragraph 2.37 states that the use of distance between home and school as a tie-breaker in oversubscription criteria "has the benefit of ensuring that children will not have a disproportionately long journey if access to their nearest school is not possible". That may be so in circumstances where there are alternative schools close at hand, but where that is not so, even where (as here) that distance is measured in terms of safe walking routes rather than straight lines, its effect can be the opposite. That can be seen to be the case here, where children with no other nearby school can be given lower priority for a school than children for whom there may be one or more such alternatives, because of the relative locations of homes and schools. I agree with the objectors that the arrangements of the Council do not take into account sufficiently the relative effect of the criterion on rural and urban communities.

26. The Council's arrangements make no provision to give priority for admission to schools for pupils who have been refused admission to their nearest school and who will otherwise face disproportionately long journeys to other schools, good practice spelled out in paragraph 2.38 of the Code. While this is not a requirement placed on admission authorities and therefore not something about which eligible parents can raise a formal objection, I agree with the objectors in this case that the Council is remiss in not following the good practice guidance provided, given that it is aware that just such cases exist as a result of its current arrangements.

27. I have been shown no evidence that financial status has a bearing on the ability to secure places at the schools listed in paragraph 19 above. However, these are clearly heavily oversubscribed, and under the Council's arrangements are only able to admit from within a small radial distance. The figures in September 2010 were:

| School | Places | Requests | Furthest distance admitted (miles) |
|------------------|--------|----------|---------------------------------------|
| Heighington | 40 | 83 | 1.31 |
| High Coniscliffe | 15 | 88 | 1.39 |
| St George's | 45 | 64 | 1.02 |
| Hurworth | 30 | 92 | 1.40 |

The same effect is also evident for the two next nearest schools for the objectors :

| School | Places | Requests | Furthest distance admitted (miles) |
|----------------|--------|----------|---------------------------------------|
| Abbey Infants | 90 | 298 | 1.06 |
| Mowden Infants | 60 | 233 | 0.98 |

28. In such circumstances it is unlikely that housing close to the schools does not have a premium attached to it, the more so since failure to secure a place is likely to have significant consequences for families in the light of the Council's current policies. Although I cannot consider any such specific effect in the absence of direct evidence either way, the more general statement in paragraph 2.39 is that admission authorities "must take account of factors that might unfairly advantage or disadvantage one child compared to another" (in setting oversubscription criteria). The Council uses distance as the principal means for giving preference to children when schools are oversubscribed. It does so in the knowledge that in some parts of the Borough, where parents who live in more rural locations compete for places at their nearest school with parents living within the conurbation, there will be no nearby alternative for the former group. It has continued to do so in spite of ample evidence that some such parents will be unable in practice to access any of their nearby schools. I share the view of the objectors that this constitutes a failure on its part to take into account the effect of that rurality, and that this therefore causes unfair disadvantage to the children affected.

29. The final reference to the Code made by the objectors is the statement in paragraph 2.45 that where distance from the school is used as an oversubscription criterion admission authorities must provide a map of the areas and indicate to what extent parents have been successful in the past in securing places, and whether that is likely to be a guide for the future. The Council's booklet for parents does have a map showing the locations of all primary schools in the Borough together with data for oversubscribed schools for the two previous years. It does not however give any indication of whether this is likely to be a good indicator for the current year, and does not therefore satisfy what the Code requires.

30. The Code states in paragraph 1.3, printed in red ink like mandatory requirements, that the aim is to achieve “a system where all parents feel they have the same opportunities to apply for the schools they want for their child”. While this does not mean that all parents must be provided with an equivalent chance of success concerning their preferences, it does mean that they must not be placed in a situation where their expressed preference (assuming this is not so unreasonable that it could not be met in the first place) has no possibility of having any practical value. The Council’s arrangements do exactly that, and clearly so, for those living in areas outside the main conurbation.

31. Although “rural children” are not given as an example of a social group in paragraph 1.72 of the Code, it is my view that it would be legitimate to consider them as such, especially when the admission authority itself has effectively decided in its own context to do so, as we have seen (paragraph 15).

32. Paragraphs 1.9 to 1.13 of the Code refer to the duties imposed by primary legislation on local authorities to increase parental choice, to promote the fulfilment by every child of their educational potential and to respond to parental representations about the provision of schooling in their area. I am of the view that the Council has not given proper weight to these matters when considering the effect of its admission arrangements (alongside those of schools that are their own admission authority) on communities outside the centre of Darlington.

33. The Council has stated that it believes its policies and procedures are “in line with the statutory requirements of the Code”, are fair and equitable and that its admission arrangements “serve the Authority well”. By contrast, it is my view, in summary, that they fail to embrace the most fundamental aspects of what the Code provides.

34. Having concluded that the arrangements for admission to community primary schools contravene the Code in their fairness to rural areas within the Borough, I must consider whether I should amend the arrangements and if so in what way. In doing so I must try to avoid disadvantaging other children.

35. From the information which has been available to me, it seems that for areas of the Borough which are outside the main urbanised area, but not close enough to one of the primary schools in these areas, there is currently little or no point in a parent expressing a preference for their nearest school, or for any other nearby school. The Borough has given consideration to the introduction of catchment areas, but has rejected the idea. However, what is needed is a means for ensuring that this situation is rectified for the parents in question, by giving them some priority for access to a nearby school without displacing children who would themselves then have no realistic nearby alternative.

36. As most of the schools located in the rural areas are oversubscribed, and filled each year by children living closer to them than the affected parents, the schools that will be able to provide places are those on the fringes of the urban area. Children who might previously have gained places there will be displaced inwards, towards the urban centre, but will nevertheless have alternative schools within relatively short distances of their homes. Any disadvantage would not in my view be an unfair one in the context of the need to provide arrangements which are fair overall, and would be outweighed by the disadvantage currently being experienced, which I believe is unfair.

37. I have therefore recommended to the Council that appropriate arrangements could consist of the designation of geographical areas, capable of clear description and conforming if possible to known topographical features, which together covered all of

the Borough outside the urbanised area, so that parents living in each described area could be given priority for admission to one, or possibly more than one, designated primary school. This would mean the addition to the oversubscription criteria for these schools of an appropriately worded criterion which would follow in priority that afforded to those attending any linked school.

38. I have been told by the Council that the process of providing Choice Advice for admission to primary schools in 2011, for which the Council believes there is a significant need in the Borough, has been going on for some time, and that if the arrangements for 2011 were to be altered there would be very considerable logistical problems caused by the need to amend the advice that has already been given to a large number of parents. It has also told me that the process of consulting on the 2012 arrangements has already begun.

39. I have considered these statements in the light of what I regard as the serious breaches by the Council of both the letter and spirit of the Code. While I believe that it is important that the unfair disadvantage to groups of children which is being caused by the arrangements in their present form is ended as quickly as possible, I am also conscious that the changes needed to rectify this situation are of a fundamental nature and likely to prove sensitive. I have come to the view therefore that it is important that there is an opportunity for there to be discussion and debate locally before the 2012 arrangements are determined, and I recommend that the Council take into account the points raised in this determination when consulting on arrangements for 2012.

40. I would also expect the Council, in the light of this determination, to give every possible consideration as to how unfair disadvantage to groups of children, to whom the existing arrangement will continue to apply in 2011, can be avoided or mitigated.

Conclusion

41. For the reasons given above, I conclude that the arrangements do not conform with the requirements of the Code and am of the view that the Council has given insufficient consideration to its overall aims.

Determination

42. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements determined by Darlington Borough Council for September 2011.

43. In addition to considering the referral, I have also considered the admission arrangements as a whole in accordance with section 88J of the School Standards and Framework Act 1998, and whether any changes should be made to them. I find that these do not conform with the requirements relating to admission arrangements.

44. I determine that for admissions in September 2011 the arrangements shall remain unaltered.

Dated: 14 December 2010

Signed:

Schools Adjudicator: Dr Bryan Slater