



Young People's  
Learning Agency

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6 September 2011

Dear

### **Objection to the Determined Admission Arrangements for Maiden Erlegh School**

I am writing to inform you that the Young People's Learning Agency (YPLA) has reached a decision on behalf of the Secretary of State about your objection to the determined admissions arrangements for Maiden Erlegh School for the 2012/13 admission year. I am sorry for the delay in issuing this decision.

The YPLA is required to seek the advice of the Office of the Schools Adjudicator (OSA) before reaching any decision on objections to Academies' determined admissions arrangements. This enables the YPLA to draw on the OSA's expertise in admissions matters. The YPLA then reaches a judgement based on all the evidence and issues a decision to all parties on behalf of the Secretary of State.

The YPLA has considered all the relevant material including objections received and the OSA's Recommendation and believes the advice of the OSA to be appropriate. The YPLA has instructed the Academy Trust to fully implement in full the following Recommendation with regard to Maiden Erlegh School's arrangements for the 2012/13 admission year.

**In response to the Secretary of State's request for advice under section 25 of the School Standards and Framework Act 1998, I recommend that the Secretary of State upholds the aspects of the objections to the admission arrangements determined by the Governors of Maiden Erlegh School which relate to the defined tie-breaker. I recommend that the School replace the determined tie-breaker with the tie-breaker used by all other co-educational secondary schools in Wokingham which is as follows:**

**"Within criteria C and D priority will be given to the applicants whose permanent home address is nearest to the school in terms of radial distance"**

The OSA's full Recommendation, setting out the objections and the Adjudicator's response to them, is enclosed for your information.

I am also copying this letter to the Chair of Governors of Maiden Erlegh School.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jon Fairclough', is centered on a light grey rectangular background.

**Jon Fairclough**  
**Head of Academies Compliance and Intervention**

## **RECOMMENDATION TO SECRETARY OF STATE**

**Case reference:** AC/003-011

**Objectors:** Ninety Nine Parents and Reading Borough Council

**Admission Authority:** Governing Body of Maiden Erlegh School

**Date of decision:** 26th July 2011

### **Recommendation**

**In response to the Secretary of State's request for advice under section 25 of the School Standards and Framework Act 1998, I recommend that the Secretary of State upholds the aspects of the objections to the admission arrangements determined by the Governors of Maiden Erlegh School which relate to the defined tie-breaker. I recommend that the School replace the determined tie-breaker with the tie-breaker used by all other co-educational secondary schools in Wokingham which is as follows:**

**"Within criteria C and D priority will be given to the applicants whose permanent home address is nearest to the school in terms of radial distance"**

### **The referral**

1. Objections have been referred to the Young People's Learning Agency by ninety nine eligible parents (the objectors) and by Reading Borough Council, via ten different submissions, about the admission arrangements for Maiden Erlegh School (the School), an academy, for September 2012. The majority of the objectors have signed more than one submission. Several objections are common to all submissions whilst some are specific to one or more. The academy is situated within the area of Wokingham Borough Council (the Council).
2. The parental objections (see paragraphs 7-12 below) have many elements, all of which are associated with the key issue of the fairness of the newly introduced designated area and tie-breaker. A substantial majority of objectors live in and around Park Ward in Reading. A smaller number live in the designated area of Aldryngton Primary School which is situated immediately adjacent to the School. Reading Council also have certain legal objections.

### **Jurisdiction**

3 On 1<sup>st</sup> April 2011 the School was re-designated as an academy. These arrangements were determined [under the Academy agreement by the governing body in accordance with the Academy Agreement, which is the admissions authority for the School. The objectors submitted their objections to the Young People's Learning Agency (YPLA) during May and June 2011. Jurisdiction on objections to admission arrangements therefore lies with the Secretary of State. He has requested (via an email from the YPLA to the OSA dated 23<sup>rd</sup> May 2011 and in accordance with section 25 of the Act) that I consider this matter and make a recommendation to him about the course of action he should take. It is of course for the Secretary of State to make the final decision.

### **Procedure**

4 In forming my recommendations, I have had full regard to all relevant legislation and guidance, including the Code.

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

- ten letters of objection received by the YPLA in May and June 2011 and various supporting papers attached to them;
- determinations made by the Adjudicator in August 2009 (ADA1571) and October 2010 (ADA1967) which relate to the same School;
- the School's response to the objections;
- the Council's response to the objections;
- the School's admission arrangements for September 2012;
- the latest Ofsted inspection report on the School and on The Bulmershe School;
- papers for, and minutes of, relevant meetings of the Council's Executive and the local Admission Forum;
- representations made at all stages of the Council's review and consultation process;
- maps of the area showing relevant geographical features, the homes of parents who applied for places at the School in 2011, and other data;
- data on historical patterns of applications to the School and the socio-economic circumstances of the area affected by these proposals.

I visited the area affected by these proposals to better understand the local context. I held a meeting at the School on 29<sup>th</sup> June 2011 which was attended by representatives of the School, the Council and the objectors. On the same day I held a public meeting attended by some 200 people. I have considered evidence put to me at both meetings.

## **The Objections**

6 The objections are many and detailed and can be grouped into the following categories.

### **(a) *Fairness***

7 That the arrangements unfairly discriminate against parents who live in the Park Ward area of Reading and other, smaller, areas because:

- the use of a subjectively determined tie-breaker (against Code paragraph 1.71(b));
- of the likely inability of parents to obtain a place for their child at the School, judged to be outstanding by Ofsted, when the accessible alternative, Bulmershe School, is only rated as satisfactory;
- the new designated area and tie-breaker will discriminate against relatively socially and economically deprived groups (against paragraphs 1.1, 1.2, 1.72, 2.11, 2.14, 2.39, 2.40 and 1.102 of the Code);
- the new arrangements will discriminate against "*the sizable ethnic minorities*" who live in Park Ward (against the Race Relations Act, 1976 and the Race Relations (Amendment) Act, 2000);
- the use of radial measurements in the tie-breaker does not take account of obstacles such as motorways, railways and safe walking routes (against paragraph 2.37 of the Code);

- that the consultation process was inadequate and did not fully engage with those who lived in Reading but had historical links with the School;
- the residents of Park Ward are unlikely to be able to obtain a place at the School which has served their community for 25-30 years. As the beneficiaries are likely to be Wokingham residents and those adversely affected Reading residents, they believe the Council is deliberately discriminating against the latter.

**(b) Parental Uncertainty**

8 Objectors believe that the new designated area “*is so vast it will give parents uncertainty and false hope as to whether they will secure a place*” (against paragraphs 1.71 and 2.12 of the Code).

9 Also, that the new tie-breaker is “*illogical, complex and hard to understand*” and will make it very difficult for a parent to be clear about their chance of obtaining a place for their child at the School (against Code paragraph 1.71 and 2.12).

**(c) Community Cohesion**

10 That the arrangement “*cuts the community of Earley in half*” and that this mitigates against community cohesion (against Code paragraph 1.13). The same is seen to apply to the use of the 600m “inner catchment area”.

11 Objectors are also concerned that friendships made at primary schools may be severed on transfer to secondary school.

**(d) Travel to School**

12 That the new arrangements are likely to result in more children being driven to School (against Code paragraph 1.8) or will require pupils to undertake unsafe journeys to school.

**(e) Legal Position**

13 Reading Borough Council argues that a new academy is required to maintain its predecessor school’s admission arrangements until any change is authorised by the Secretary of State. It believes this has not occurred in this case. They also state that neither the Council nor the School have either published the newly determined admission arrangements or properly informed interested parties how they can object to them.

**Background**

**General Context**

14 In 2007, the Council took the decision to discontinue a local secondary school, Ryeish Green, whose designated area (for school admission purposes) included parts of Lower Earley. This resulted in a need to reallocate the designated area of Ryeish Green to other schools. The Council document “Further Consultation on the Proposed Closure of Ryeish Green School” (March 2007, p14) clearly states “*Should Ryeish Green close, the designated area would be reallocated to The Bulmershe and The Emmbrook schools*”. This is, in fact, what occurred. It proved to be controversial and led to an objection to the Adjudicator in August 2009. At that time, the Council promised to undertake a review of the designated areas of its secondary schools.

15 A Secondary Admissions Review Board, with an independent chair, was duly established and met three times between March and June 2010 with the local Admissions Forum being invited to contribute to its work. The Board recommended a review of the admission arrangements of six of the Borough's eight secondary schools, the first such review for some 28 years, and the need for a more detailed review of the designated areas of the School and a neighbouring school, The Bulmershe School.

16 In September and October 2010 the Council undertook a wider consultation exercise based on the Board's recommendations, the outcome of which was summarised by an independent consultant and considered by the Council and the local Admissions Forum. The feedback received led to modifications to the Board's recommendations which, in turn, formed the basis of the annual statutory consultation on admission arrangements which took place between November 2010 and March 2011. The local Admissions Forum considered its view of the modified proposals at its meeting on 14<sup>th</sup> February 2011 and of the overall findings of the statutory consultation process at its meeting on 15<sup>th</sup> March 2011. The Council then determined the admission arrangements on 31<sup>st</sup> March 2011, a date that had been set for this purpose in October 2010. These arrangements include the new designated area for the School and a new tie-breaker, both of which will be used if demand for places exceeds supply.

17 During this period, the School had community school status. However, on 30<sup>th</sup> March 2011, the School was informed by the Secretary of State that he had approved the School's bid to be re-designated as an academy from 1<sup>st</sup> April 2011. On this date responsibility for admission arrangements passed from the Council to the governing body. In an email from the chair of the governing body to the OSA dated 9<sup>th</sup> June 2011, the chair states "*the governing body, in discussion, agreed to adopt the existing (admission) arrangements, set by the local authority.*" Thus, although all the background work on, and decisions about, the School's admission arrangements were undertaken by the Council, it is now the School's own admission arrangements which are the subject of these objections. Legislation requires an admission authority to complete its consultations on future admission arrangements by 1<sup>st</sup> April in the determination year. I believe that the School's decision to adopt the Council's determined arrangements was entirely reasonable in this context. The School welcomes its new responsibilities for admissions and planning is already underway to ensure that the determined arrangements for 2013 are properly considered.

18 Council documents record that, in autumn 2010, the School had stated its intention to adopt the outcome of the review as the future academy's admissions arrangements. However, I note a later (early 2011 but undated) email on this matter from the School to the Council which states: "*the School has looked closely at the new proposal which uses additional distance to Bulmershe School as a tie-breaker and has listened carefully to the views and concerns of parents and other stakeholders in the local community*" and which ends "*In conclusion, therefore, we find it difficult to support this new proposal.*" This view, and the work that the School has already initiated to consider suitable admission arrangements for 2013, suggests that further changes are likely in the immediate future.

19 The School, which has an admission number of 278, is historically highly oversubscribed. In September 2011, 165 applicants were unable to obtain a place and it is highly likely that for entry in September 2012 this pattern will continue. It is therefore likely that the application of a tie-breaker will be required.

### ***Changes to Designated Area***

20 As a result of the process described above, the School has made changes to its designated area which is enlarged and now shares some boundaries with, and is contained within, the designated area of Bulmershe School. The Council states that the new arrangement has been made because “we want parents to know that if they live in this area and express a preference for both Maiden Erlegh and The Bulmershe School, they will have a good chance of one of these two schools being allocated to them.” The Council believes that the new designated area better reflects the current population distribution than did the designated area it replaces and which was determined over 25 years ago. The proposed new arrangement means that all addresses within the shared area have two designated schools and that, as things stand, it is very likely there will be sufficient places in both schools to meet demand.

### **Change to Tie-breaker**

21 The School has also made a change to the tie-breaker that will be used should the School be oversubscribed, which is likely, in September 2012. In previous years, the tie-breaker has always been the straight line distance from home to school. The new tie-breaker is set out below.

22 Within criteria C (siblings) and D (children who live in the designated area),

*“first priority will be given to applicants whose permanent home address is south of the centre line of the A329 and within 600m radius of Maiden Erlegh School, after which priority will be given to the applicants whose permanent home address is the greatest additional radial distance to the alternative designated area school (Bulmershe). This additional radial distance is calculated as (distance from home to Bulmershe School) **minus** (distance from home to Maiden Erlegh School), measuring both distances as stated.*

*Priority within other over subscription criteria will be given to the applicant whose permanent home address is nearest to the school in terms of radial distance”.*

23 The tie-breaker therefore combines an “inner designated area” with additional distance to Bulmershe. The latter replaces a straight line distance tie-breaker and is the focus of many elements of the objection. The Council believes this is fair as it seeks to ensure that no pupil who lives within the designated area has a long journey to secondary school.

### **Consideration**

24 The objectors are concerned about the changes made to the School’s designated area and to the tie-breaker. I shall now consider the various categories of objection as set out in paragraphs 7-13 above.

#### **(a) Fairness**

25 The School is over-subscribed so the tie-breaker is likely to be applied to parental preferences for places in September 2012. It is designed to discriminate. My role is to ascertain whether the tie-breaker achieves this fairly by applying the requirements of the Code and other relevant legislation.

26 I shall consider fairness in relation to the definition of the new designated area and “inner designated area”; the use of radial distance; the use of additional radial distance to alternative designated area school; access to an outstanding school; discrimination against certain social groups; discrimination against ethnic minority groups; discrimination against Reading residents; and the consultation process.

## ***Definition of Designated Area and Inner Designated Area.***

27 In general terms the Code (paragraph 2.40) permits admission authorities to make use of catchment areas, which are locally referred to as designated areas. The objectors do not dispute this. The objectors believe that, given the School's popularity, it makes "no sense" for the designated area to be enlarged, as is the case. They believe that the previous size was well matched to demand for places and had the benefit of ensuring that virtually all applicants who lived in the designated area obtained a place. The Park Ward objectors live within the previous designated area and, being relatively close to the School, had an expectation that their children would obtain a place at the School.

28 All addresses in Wokingham lie within a designated area with a designated secondary school. On the closure of Ryeish Green to new entrants in September 2006, the designated areas of two local secondary schools were changed and have remained unchanged since. As the Adjudicator's 2010 determination (ADA1967) states, "*Designated area information, including maps, is available electronically, and can be viewed through the Council's web-site. Allocation histories for the last five years for all secondary schools are detailed and the level of demand for places at individual schools is detailed. The arrangements are clear and easily accessible for parents.*"

29 However, in both 2009 and 2010, objections were made to these admission arrangements by parents in parts of Lower Earley which were previously in the designated area of Ryeish. They believed that their area was being discriminated against because, although the School was both their nearest and most accessible, they found it very difficult to obtain a place there for their child. They found they lived in an area that had been allocated to an annexe of the Bulmershe designated area. Although in 2009 the Adjudicator concluded "*I do not consider that there has been discrimination against the contested designated area for Bulmershe School*", in light of the objections and the closure of Ryeish, the Council took the decision to review the designated areas of local schools, a process which has now been concluded.

30 The School's new designated area is different in two respects. First, it has been enlarged and, secondly, its boundary in the south and much of the east and west is contiguous with the designated area of The Bulmershe so that all of the School's designated area now lies within the larger designated area of Bulmershe.

31 It has been enlarged to cover addresses in Lower Earley as well as areas traditionally served by the School. The result is that the School now sits more centrally in its designated area. By sharing a larger designated area with Bulmershe the Council has sought to ensure that all families within the larger area can obtain a place at one of the two schools, should they wish to do so. Since the closure of Ryeish School, residents of Lower Earley who were previously served by Ryeish School have found that, although the School was the nearest and most accessible to their homes, they were placed in a designated area "annexe" of the Bulmershe designated area. They found it difficult to obtain a place at the School, even though it was the nearest to their homes, because of the popularity of the School, the fact they were outside the School's designated area and the application of the straight line distance tie-breaker.

32 Given the fact that the impact on secondary school admissions of the closure of Ryeish Green to new entrants in 2006 has only become clear in recent years, it was reasonable for the Council to review designated areas for the first time in over 25 years and the evidence shows that this was done thoroughly. In introducing the new designated areas, the Council adapted its recommendations in light of feedback, sought to remove the anomalous "annexe" arrangement

for the Lower Earley area, minimise travel to school distances overall, minimise any disadvantage to the Lower Earley community caused by the closure of Ryeish Green, include all areas traditionally served by the School, and ensure that parents at every address in the new designated area would be likely to obtain a place at the School or at The Bulmershe. I believe that these considerations make the decision to enlarge the School's designated area reasonable.

33 The objectors believe that the enlarged designated area makes no sense as it will be inevitable that demand for places from within the area will exceed supply. In their view, this will raise expectations of many people who, because of the impact of the tie-breaker, live in the designated area but who will, in practice, have little or no chance of securing a place. This will be especially so in 2012 when the new area is used for the first time with a real cohort. However, this ignores the significance of the third over-subscription criterion which gives priority to siblings who live in the designated area. In September 2011, 90 pupils (32% of pupils who were offered a place) obtained a place through this criterion whilst only 15 pupils with siblings, but who lived outside the designated area, did so. This pattern was similar to that in previous years. The new designated area therefore gives families with children at the School a reasonable degree of certainty about their ability to secure a place for a younger sibling.

34 Residence in the designated area has another significant advantage in that it gives parents at such addresses priority over those that do not when the tie-breaker is applied. The objectors, in effect, are seeking to minimise the number of parents to whom this advantage applies. Whilst the previous designated area, being smaller, may well have given more certainty to parents who lived within Park Ward about their ability to obtain a place, the closure of Ryeish meant that other parents, including those living in Lower Earley, were equally certain that they would not be able to obtain a place at the School, the school which is nearest to their homes.

35 I believe that it was reasonable for the Council to increase the size of its designated area in the way it did. By retaining Park Ward and including Lower Early it sought to give a better balance to meeting the needs of these two communities. By including the new area within a larger, shared, designated area, it also sought to ensure that parents would be able to obtain a place at one of the two designated schools.

36 I also believe that the School's new designated area has been constructed objectively. It uses a main railway line and major road to the North, the M4 to the South, open land to the West and the Council boundary (which follows a main road) to the East. This forms a coherent geographical area which does not exclude particular housing estates or addresses that might disadvantage particular social groups and which meets the requirement of paragraph 2.40 of the Code. Journey to school times and safe walking routes have been properly considered and this has duly influenced the new arrangements.

37 The statutory walking distance for pupils aged over 8 is 3 miles with very few addresses within the designated area being further than this from one of the two schools. However, the key issue for residents in both Park Ward and Lower Earley is not, in truth, distance but the fact that the majority wish to obtain a place at the School, rather than at The Bulmershe, as the former is regarded as more successful than the latter.

38 I conclude that the School's new designated area has been constructed in an objective way. The closure of Ryeish made a review of designated areas necessary and the outcome is objective, having taken into account a range of appropriate factors.

39 The inner designated area forms part of the tie-breaker with first priority being given to applicants whose permanent home address is south of the centre line of the A329 and within 600m radius of Maiden Erlegh School. All parties agree that it is likely that all applicants who live in this area will be offered a place for their child at the School. Very few objectors live in this area. The objectors believe that this element of the tie-breaker is subjective and complicates an already difficult to understand tie-breaker.

40 The Council's stated reason for including an inner designated is that it wished to protect the interests of families living very close to the School. The Council, and the local Admissions Forum, considered various rationales for the definition of the inner area including use of Aldryngton Primary School's designated area. This was rejected because, as part of the overall review of secondary school admissions, an earlier decision had been taken to remove designated primary schools from the admission arrangements of all secondary schools in the Council's area.

41 Initially, the Council planned to define the inner catchment area by a 600m circle around the School but it was later decided to exclude addresses north of the A329, which, although within 600m of the School, had historically been in the Bulmershe designated area.

42 The notion of the 600m inner designated area was not included in the initial consultation exercise but was an outcome of it. Several objectors believe it is arbitrary, ill-considered, and grossly unfair to families who live a few metres beyond the 600m cut-off point. Other than the A329, it does not follow any pronounced geographical features, cuts across residential roads excluding some homes but not others in cul-de-sacs. It includes most parts of the designated area of Aldryngton Primary School (which is co-located with the School) but not all. Council officers have modelled the potential impact of the inner area and concluded that it confers no real additional advantage on the ability of families who live within it to obtain a place at the School. Officers believe it has been retained purely to reassure local families of the Council's intentions. The consideration given to its construction compares unfavourably with that given to the overall designated area. I am persuaded that the design of this inner designated area is arbitrary (and therefore contrary to paragraph 1.71(b) of the Code), ill considered, adds no material benefit to any family, makes the tie-breaker more complex to understand, and therefore does not meet the requirements of paragraph 1.71(a) of the Code. I conclude it should be removed from the tie-breaker.

43 Whilst I understand the Council's wish that parents who live close to a school have access to places at it, in this case, parents who live within 600m are highly likely to obtain a place without this criterion and the broader objective of prioritising local families can be achieved in fairer and more objective ways.

### ***The Use of Radial Distance***

44 In general, the use of radial distance is permitted by the Code (paragraph 2.37) and is accepted by the Code to be a clear and objective oversubscription criterion. In an urban area such as this, radial distance is closely correlated with actual travel distance, is objective and easy to measure. It avoids the need to define, for every address, what constitutes a safe walking route to school, a definition which is often contested locally. Its use is well established in the area, being used by all community schools in Wokingham, including the School itself. The arrangements clearly state how radial distance will be measured and the Council has given due consideration to obstacles such as motorways, railways and safe walking routes. I

am satisfied that the use of radial distance in this case meets the requirement of paragraph 2.37 of the Code.

### ***The use of additional radial distance to alternative designated area school (ARDADAS)***

45 The second element of the tie-breaker is what the objectors refer to as “*additional radial distance to alternative designated area school*” (ARDADAS). This is defined as “*the additional radial distance to the alternative designated area school (Bulmershe). This additional radial distance is calculated as (distance from home to Bulmershe School) minus (distance from home to Maiden Erlegh School)*”. Its effect is to give priority to those seeking admission to the School who live the greatest additional distance to Bulmershe School over those who live the shortest distance from the School. The effect will be to give priority to children in the south east of the designated area at the expense of those who live to the north east. In making this change, the Council is seeking to give priority to the families who live in Southern Lower Earley, immediately to the north of the M4 (a natural boundary), and who were historically in the Ryeish Green designated area.

46 The objectors believe that the introduction of the ARDADAS element of the tie-breaker will reduce their chances of obtaining a place at the School for their children (which is likely to be true) and that this is unfair.

47 It is not unusual, especially in rural areas, for the distance to an alternative school to be considered as part of an admission authority’s oversubscription criteria. Indeed, the Code refers to the potential utility of such a measurement at paragraph 2.38 where reference is made to good practice taking into account the needs of children with “*a disproportionately long journey to another school if denied admission to their nearest school.*” However, in this case, the vast majority of addresses are within the statutory walking distance of 3 miles from both schools and I do not believe that any child who does not get a place at the School will have a “*disproportionately long journey*” to The Bulmershe.

48 The objectors believe that ARDADAS is difficult to understand whilst the Council takes the opposite view. It is clear to me, not least from the number and nature of the objections, that the way of calculating ARDADAS is clear and simple and that its general implications for particular communities are widely understood. In this sense, I do not believe that ARDADAS is complex. However, when its application relates to the chances of a parent at a particular address obtaining a place for their child at the School, it becomes very difficult to assess whether many have a reasonable likelihood of gaining a place.

49 When distance to the next nearest school is part of a distance criterion it is usual for it to apply to more than just two schools. Its use in this case produces what the objectors refer to as a “*golden line*” which runs approximately south east from the School. Proximity to this line, within the designated area, is likely to raise an applicant’s chances of being successful. Households close to this line can be very confident of their chances of gaining a place. To the north, west and east of the School, very small changes in the ARDADAS calculation can have a very big impact on the chance of obtaining a place, even for homes very near to the School. This impact will be especially unclear in the first year. As the Council states, “*what we understand is that many residents are uncertain as to how the proposals will affect them individually*”, especially because “*we have no historic data to analyse meaningfully*”. Also, “*We have been quite consistent in saying that current data has limited value in modelling future outcomes.*”

50 A further effect is that the chances of a household at a particular address obtaining a place is likely to vary significantly for many addresses from year to year, depending on the home addresses of all applicants. It is a very unpredictable and unstable criterion for many addresses. Uncertainty for many families will therefore not just be confined to the first year. Many of these families will live relatively close to the School.

51 Several objectors have made the point that actual home to school radial distance is more closely correlated with actual travel distance than is the result of taking one radial distance from another. Whilst the latter produces a clear rank order, the objectors have pointed out that the basis for the rank ordering is arbitrary and is poorly correlated to real life experience. They therefore believe this is further evidence that it is unfair. The Council “*reject this proposition*” when “*applied in the circumstances of these particular schools.*” The arguments relating to this issue are mathematically complex and, without very detailed additional analysis, I am unable to conclude which party is correct. Also, I do not believe this is a decisive factor in this case.

52 Simple radial distance from home to school is used as an oversubscription criterion by all other co-educational secondary schools in Wokingham. Its use is well established and its implications for the chances of gaining a place at the School can be demonstrated (see paragraph 28). It provides all residents, whichever direction they live from the School, with a more stable and predictable basis for assessing their chance of obtaining a place at the School for their child.

53 In introducing the concept of ARDADAS, the Council believed it properly considered and balanced the needs of those living in the area historically served by the School; the impact of the closure of Ryeish Green; the relative proximity of schools to the communities they serve; it's duty to secure sufficient school places to meet demand; the pattern of secondary schools in the area; the pattern of supply and demand for places; and accessibility issues in relation to travel to school. These are an appropriate range of factors to take into account. However, I believe it gave too much weight to proximity to alternative school to secure access to places for Lower Earley residents and too little to the large number of families for whom the new arrangements are likely to have an unpredictable and unstable impact, not only in its first year but in years to come.

54 Given that both schools are within the statutory walking distance of 3 miles from virtually every home in the shared designated area; that additional travel distances are unlikely to exceed 1 mile (the Bulmershe School is approximately 1.5 miles from the area where the majority of objectors live and approximately 2.5 miles from Lower Earley); and that both schools are suitable schools, I must conclude that the main reason for the introduction of ARDADAS is to change the relative chances of the residents of Park Ward and Lower Earley obtaining a place at the School in favour of the latter. To secure this, the Council has chosen to give greater weight to ARDADAS than to radial distance. When the Council recognised that this might prejudice the chances of parents living very close to the School obtaining a place at the School it introduced the concept of an inner area in which ARDADAS would not apply. The use of both ARDADAS and the inner area meant that completely different principles were applied to a parent's chance of obtaining a place depending on their precise address within the designated area. Given the local circumstances, I believe that it would have been preferable for the Council to have adopted the single principle of radial distance from home to school, as it has done with all other co-educational secondary schools in the area.

55 I have earlier concluded that reference to an inner area must be removed from the tie-breaker. In this context I also believe it would be fairer if radial distance alone is used for this purpose. This would ensure that the families who live closest to the School obtain a place

there, that virtually no family has to travel more than 3 miles to the alternative suitable school, The Bulmershe, and that it would be relatively straightforward for an individual parent to understand the chance of their child obtaining a place for their child at the School.

56 On balance and in the context of this designated area where few homes are further than 3 miles from a designated school, I believe that the use of ARDADAS is unfair to families who live relatively close to the School and has created uncertainty for many more. The families who would benefit from the introduction of ARDADAS have been clear that, since the closure of Ryeish Green, they have been unlikely to obtain a place at the School. The effect of these changes is likely to be an increase in the number of families who cannot assess whether they have a reasonable likelihood of gaining a place at the School. Over recent years, many Lower Earley parents have accepted a place at The Bulmershe and have made appropriate arrangements for their children to travel to school. I also note that virtually all parents who live in the combined designated area would have access to an alternative suitable designated school within the statutory walking distance. I therefore conclude that the use of ARDADAS does not meet the requirements of paragraph 1.71 of the Code and is unfair.

### ***Access to an outstanding school***

57 On the basis of the latest Ofsted inspections, the quality of education provided by the School is judged to be better than that at The Bulmershe. As a result of these proposals, families who live in Park Ward believe they are less likely to obtain a place at a school judged by Ofsted to be outstanding. However, whilst parents have a right to expect their local school to be judged outstanding, the law does not give them the right, when a school is oversubscribed, to be offered a place at such a school. In legal terms, both schools are suitable. The objectors believe that the new arrangements do not meet the requirements of paragraph 1.2 of the Code but this refers to local authority powers and is outside of my jurisdiction.

### ***Discrimination against particular social groups***

58 Super output area data shows the relative socio-economic circumstances of the communities who will gain and lose from the determined tie-breaker. The Council's Equality Impact Assessment of the new arrangements concludes that "*none of the areas are amongst the most deprived in either Borough*". This is certainly true with both the areas concerned being in the top quartile of socio-economic advantage nationally. The objectors respond by stating "*this is not the same thing as saying that the areas are similar and there will be no impact*." This is also true, with super output area data showing that the areas that are likely to gain are relatively more advantaged than those that will lose.

59 However I note that the DfE schools data base shows that some 3% of pupils at the School are entitled to free school meals, a figure well below the national average and that, in 2008, Ofsted found that the proportion of pupils at The Bulmershe School who were entitled to free school meals was "*below that found nationally*". This data suggests that the current admission arrangements result in pupils at the School and at Bulmershe generally coming from relatively advantaged homes. Given that all families in the designated area are likely to obtain a place at one of these two schools, the data does not suggest that the new arrangements will, in themselves, significantly disadvantage any social group.

60 This would appear to be particularly true in relation to the School itself, as the data shows that the School already serves relatively prosperous families, a point reinforced in the 2009 Determination where the Adjudicator concluded the School is located in a "*very favourable designated area*". It is difficult to see how the enlargement of the designated area

can result in the School serving significantly more advantaged families than it does at present. The proposed tie-breaker could have had such an effect but I have concluded this should be changed. Furthermore, my conclusion that the boundaries of the School's designated area have been constructed objectively does not

suggest that the change is designed to favour any particular social group by excluding any area of significant disadvantage. I believe that the available evidence suggests that the requirements of paragraphs 1.1, 1.72, 2.11, 2.14, 2.40, 1.102 are being met.

61 However, the School will want to review the impact of its new admission arrangements, especially the operation of the tie-breaker, to ensure that it is doing all it can to address the requirements of paragraph 1.102 of the Code.

62 The objectors provide information about property prices in Park Ward compared to those in the Lower Earley area they believe will benefit from the new tie-breaker. This data shows property prices to be higher in the latter than in the former, although the objectors do state that their analysis only includes "*family houses*". I do not have access to comprehensive comparative data on property prices across the designated area but there is evidence that the pupils at the school already come from relatively advantaged homes and I believe the new designated area has been objectively constructed. I am unable to come to any firm conclusion in relationship to the requirements of paragraph 2.39 of the Code.

### ***Discrimination against ethnic minority groups***

63 The objectors suggest a breach of the Equalities Act 2010 (which replaced the Race Relations Act) in relation to race discrimination. I note that, in June 2007, Ofsted found that the School's pupil population contained "*a larger than average proportion of pupils from minority ethnic backgrounds although very few are at an early stage of English acquisition.*" Given the introduction of new admission arrangements and the fact that the names and backgrounds of pupils who apply for places, and are offered them, at the School in 2012 are unknown, it is difficult to assess, at this stage, the effect of the proposed admission arrangements on particular ethnic groups or on pupils with any other protected characteristic. Whilst there is some general demographic evidence that there may be an adverse impact on the number of ethnic minority pupils who might obtain a place, this data is not based on actual applicants for places at the School but on the broader population characteristics of the area and the pupil rolls of local primary schools.

64 The Council's equality impact assessment found that "*the areas where children are less likely to gain a place at the School under the new arrangements have a lower % white British population, compared to those areas where children are more likely to gain a place. This cannot be determined exactly in advance, but it is considered that any impact is unlikely to be disproportionate to the legitimate aim of determining admission arrangements that meet other mandatory considerations.*"

65 Any discrimination will result from the application of the tie-breaker to particular home addresses. I have no evidence of any discrimination based on ethnicity or any other protected characteristic. It will be for the governing body to monitor the impact of any changes to the admission arrangements on the composition of the pupil population and to take any necessary steps to comply with the law.

### ***Discrimination against Reading residents***

66 Reading BC states that the proposed admission arrangements “*discriminate in favour of a large majority of Wokingham Borough residents living in the south of the new designated area at the direct expense of Reading resident families living in the north of the new designated area who have traditionally always been able to access places at the School.*” This view is echoed by other objectors.

67 I have no evidence to suggest that such discrimination was the motivation for the proposed changes but this is likely to be the effect. I have considered the impact of the proposals on social groups (see paragraphs 58-62 above) and ethnic minority groups (see paragraphs 63-65 above). Given that the changes were triggered by the closure of Ryeish which was to the south of the school it is not surprising that the Council, in seeking to meet the needs of the residents who suffered adversely from this closure, should revisit the relative priorities given to different geographical communities. Whilst Park Ward residents have traditionally sent their children to the School, this does not give them, in light of an ever changing demographic context, an inalienable right to do so in the future. This is one reason why admission arrangements are subject to regular review and consultation.

68 In the event, I have concluded that the proposed tie-breaker does not meet statutory requirements and have determined an alternative tie-breaker. Although this will provide a relative benefit to Reading residents I have not reached this conclusion because I believe there has been discrimination against Reading residents but because I believe both elements of the tie-breaker are intrinsically unfair.

### ***The consultation process***

69 The objectors believe that the consultation process was inadequate for a range of reasons, but especially because it did not fully engage with those who lived in Reading but had historical links with the School. I note that the Council engaged independent consultants to set the scene for the review, established a Secondary Admissions Review Board, with an independent chair, to consider the matter further and inform its statutory consultations on school admission, that the proposals were amended in light of feedback received, that the Council has clearly defined and published its “relevant area” for consultation on school admission matters in an appropriate way, that the local Admissions Forum was consulted on several occasions, and that the consultation process met statutory requirements.

70 Evidence shows that Reading Borough Council was invited to take part in the review, as it related to the School, in June 2010, well in advance of the statutory consultation period for 2012 admissions which could not formally start before 1<sup>st</sup> November 2010. The evidence, in the form of campaign leaflets, also shows high levels of public awareness about this issue during the summer of 2010. I believe that consultation on the admission arrangements for 2012 met all statutory requirements. Given that the School became an academy on 1<sup>st</sup> April 2011, it was entirely reasonable for its governing body to adopt the admission arrangements as determined by the Council for the School on 31<sup>st</sup> March 2011.

### **(b) Clarity and Certainty for Parents**

71 For the reasons set out above, I have concluded that the School’s proposed tie-breaker is unfair and contrary to paragraph 1.71 of the Code, in large part because of the uncertainty it creates for many parents. I also note, at paragraph 18, the School’s views and the likelihood that the School will wish to set its own admission arrangements for the future. This offers the prospect of yet more change and uncertainty in 2013. In coming to my conclusions, I have sought to minimise uncertainty for parents. Now that the School is likely to have sole

responsibility for admission arrangements for the foreseeable future I believe that 2012 is the wrong year to introduce major changes, even if I had been minded to approve them, because so many families base major life choices, such as deciding where to live, on their assessment of their ability to obtain a place at their preferred choice of school for their children. The views and new responsibilities of the School provide a further context for my conclusion that the tie-breaker element of the determined admission arrangements is unfair.

### **(c) Community Cohesion**

72 The objectors believe that the determined arrangements “*cut the community of Earley in half*” and that this is inconsistent with the requirement to promote community cohesion (Code paragraph 1.13). The same is seen to apply to the use of the 600m inner catchment area. The popularity of the School means that it is inevitable that there will be a cut-off line at some point and, given the density of housing in the area, this will be relatively close to the School. In creating the new designated area shared by the School and The Bulmershe, the Council has used significant geographical features to identify boundaries in such a way as to create a defined community. It has considered the needs of various geographical communities within the area. In an urban area such as this, designated area boundaries will always be subjective to some extent but those identified by the Council have been given appropriate thought. The objector’s concern is related to the designated area of the School. If community cohesion is considered in relation to the shared designated area, the boundary can be seen as a more satisfactory representation of a geographical community. I believe that the arrangements have paid appropriate attention to promoting community cohesion and meet the requirements of paragraph 1.13 of the Code.

73 Some objectors are also concerned that friendships made at primary schools may also be severed at secondary school transfer. For admissions in 2012, the Council has taken a considered decision to remove attendance at named primary schools from the over-subscription criteria of all its secondary schools. Instead, they give priority to siblings and home address. Aldryngton Primary School has objected strongly to the new arrangements on the basis that it believes, because the two schools share a site and have close links, and because the 600m inner designated area does not enable all Aldryngton pupils to be guaranteed a place at the School, its status as feeder primary school should be retained.

74 The Council made the decision to remove feeder primary schools from oversubscription criteria after careful consideration and for good reason. To reinstate it for one feeder primary in relation to one secondary would be unreasonable when there are other ways of securing the same objective of enabling local pupils to access local schools, such as distance from home to school. Also, giving priority to proximity from home to school over school attended gives priority to local residents rather than to those who have obtained a place at Aldryngton but who may live further afield. The popularity of the School may well result in friendship peer groups at several primary schools being split. However, this is not against any requirement of the Code and the School’s admission arrangements do not give any suggestion that attendance at any named primary school will afford any priority.

### **(d) Travel to School**

75 Several objectors believe that the new arrangements are likely to result in more children being driven to School (against Code paragraph 1.8). I have already noted that virtually all addresses lie within the 3 mile statutory walking to school distance. The Council have undertaken a travel to school risk assessment and concluded that there is a safe walking route from all addresses in the designated area to the School and to Bulmershe. This assessment was undertaken by independent and suitably qualified consultants using a nationally

recognised methodology. The Council has noted that many current Bulmershe pupils use these routes every day with no apparent problem. Some objectors contest the adequacy of the risk assessment in relation to specific journeys but I believe it was suitably rigorous. I visited a particular road crossing that was a cause of particular concern and concluded that, whilst the road was certainly busy, crossing arrangements were well designed and suitably safe for secondary aged pupils.

76 The statutory walking to school distance for pupils over 8 years old applies across the country and represents the Government's view that it is reasonable for secondary aged pupils to walk or cycle to school, accompanied by a parent if necessary, over such a distance. Parents will have their own view as to whether they need to drive their child to school but I am persuaded that no child within the designated area of both schools has an unreasonable (in terms of distance and safety) journey to school, irrespective of which of the two designated schools they attend. I therefore conclude that the arrangements in themselves need not result in more children being driven to school or compromise their safety whilst travelling from home to school.

### **(e) Legal Position**

77 Reading Borough Council makes the legal point that "*the legislation relating to academies states that all academies should convert on the existing admission arrangements which can only be varied with the consent of the Secretary of State*". It also points out that the proposed arrangements are "*substantially different*" to those for September 2011.

78 The Council made a commitment to review secondary school admission arrangements before the new legislation relating to academies came into force. It kept to this commitment and I believe it would have been unreasonable for the Council to delay its review, the scope of which was wider than the School alone, because of these changes and the possibility that the School might gain academy status. Although the arrangements were determined only one day before the School became an academy the governing body agreed to adopt the Council's admission arrangements without any change. The current legal framework in relation to the admission arrangements of an academy, require me to make recommendations to the Secretary of State. I do not have direct powers to change the School's arrangements. This means that any variation to the arrangements will be dependent on the consent of the Secretary of State being forthcoming. I therefore cannot accept this objection by Reading BC.

79 Reading BC also state that neither the School nor the Council have "*published the determined arrangements or given any advice on how to raise objections to them.*" The Council published a Notice on 27<sup>th</sup> April 2011 which notified the public that it had agreed its admission arrangements for 2012, how details of the arrangements could be obtained, and how an interested party could contact the OSA to object to them. On 28<sup>th</sup> June 2011, I looked at the Council's web site and found the arrangements, a list of significant changes since the previous year, and a link to the OSA website. On the same date I found the arrangements were also published on the School's web-site. I also note the significant local interest in the proposed changes and the number of objectors. I am satisfied that the new arrangements are widely known, have been published and that information has been provided for any interested party who may wish to object to them.

### **Views of Interested Parties**

80 Several hundred people have responded to the Council's review of secondary school admissions and/or to myself during my own involvement in this matter. These views have been expressed in petitions, emails, letters, and very detailed written submissions as well as at a

range of consultative meetings. Responses have been received from local MPs, Councillors from both Reading and Wokingham, parish councils, other schools, parents and other interested parties. The Council has kept copious records of the responses made before my involvement and I have familiarised myself with this material.

81 Of the material I have received directly, including points made at the public meeting on 29<sup>th</sup> June 2011, the main issues which were raised are set out below.

- (i) The complexity of the new tie-breaker. Those opposed to the new arrangements believe it is difficult to understand whilst those in favour believe it is clear. (see paragraphs 39-56 above)
- (ii) The extent to which the proposed new tie-breaker enables parents to ascertain whether they are likely to obtain a place at the School for their child. Whilst some thought this was the clear, the majority did not. (see paragraphs 48-56 and 71 above)
- (iii) The new designated area is too large. (see paragraphs 27-38 above)
- (iv) The proposed "inner designated area". In general, those that live within this area support it whilst those who do not, the majority, are against it. (see paragraphs 39-43 above)
- (v) That pupils attending Aldryngton Primary School should be given priority in the School's oversubscription criteria. (see paragraphs 73-74 above)
- (vi) That many families who have moved close to the School with the expectation that they would be able to obtain a place at the School for their child believe they are now unlikely to do so. They believe this is unfair. (see paragraph 71 above)
- (vii) The conduct of the consultation exercise. Whilst many believe that the consultation exercise was flawed in several ways, a significant number believe it was robust and thorough. (see paragraph 69-70 above)
- (viii) Travel and personal safety issues. This concern covered a wide range of views and issues. There was disagreement as to whether the new arrangements would increase or diminish car travel and the extent to which potential walking routes to schools were safe. (see paragraphs 75-76 above)
- (ix) The degree to which the new arrangements promote community cohesion. Views on the definition of the local community vary. One view is that the new arrangements would promote community cohesion within the wider Earley and Lower Earley area of Wokingham (which lies south of the School), whilst another view emphasises community cohesion to the north-west of the School, (which includes parts of east Reading). This difference is also reflected in views as to which local authority residents are being treated unfairly. One view is that residents in Park Ward Reading are being treated unfairly by the new arrangements whilst the residents of Lower Earley believe that they were treated unfairly by the previous arrangements. (see paragraphs 72-74 above)

## **Conclusions**

82 I believe the Council acted reasonably in undertaking a comprehensive review of admission arrangements for its community secondary schools, and that the School acted reasonably in adopting the Council's determined arrangements when it was re-designated as

an academy on 1<sup>st</sup> April 2011. I believe that the consultation and decision making process was rigorous, comprehensive and met all statutory requirements.

83 I have concluded that the determined admission arrangements are fair in several respects. I do not accept the objections relating to discrimination by social group, ethnic group or by local authority of residence. Neither do I accept the objections relating to the use of straight line radial distance rather than walking distance. I have also concluded that the newly defined designated area, which has been enlarged with the aim of providing a place in a suitable designated secondary school for all designated area residents, meets the requirements of the Code.

84 However, I have accepted the objections relating to both elements of the determined tie-breaker. I have concluded that the definition of the inner area is subjective, ill-considered, adds no material benefit to any family and does not meet the requirements of paragraph 1.71(b) of the Code.

85 Also, on balance and in the context of this designated area where few homes are further than 3 miles from a designated school, I believe that the use of ARDADAS is unfair to families who live relatively close to the School whilst also increasing the number of families who cannot assess whether they have a reasonable likelihood of gaining a place at the School for their child in 2012. I have noted that virtually all parents who live in the combined designated area would have access to an alternative suitable designated school within the statutory walking distance.

86 Given that radial distance meets the requirements of the Code and is used as a tie-breaker by all other Wokingham co-educational secondary schools, I believe that the determined tie-breaker should be replaced by a simple measurement of radial distance from home to school using the methodology determined by the Council.

87 I have concluded that the determined proposals do not have an adverse impact on community cohesion and that the decision not to include reference to Aldryngton Primary as a designated feeder school was reasonable in the context of the Council's earlier decision to remove feeder

primary schools from the oversubscription criteria of all community secondary schools and the fact that the School receives pupils from several feeder primary schools.

88 I believe that the Council have taken reasonable steps to ensure that travel and personal safety considerations have been adequately addressed in their considerations and their proposals. Virtually all households in the designated area lie within the three mile statutory walking to school distance for secondary aged pupils. The admission arrangements in themselves will not require any additional journeys by car. I therefore reject the objections relating to travel to school. The School, working with the Council, may wish to give further thought to a travel to school policy which seeks to limit the use of private transport to and from school

89 I believe that the Council met all legal requirements in relation to the consultation process, to publishing its determined arrangements, and to making interested parties aware of how they could object to them. I therefore reject Reading Borough Council's objections that certain legal requirements were not met.

## **Determination**

90. In response to the Secretary of State's request for advice under section 25 of the School Standards and Framework Act 1998, I recommend that the Secretary of State upholds the aspects of the objections to the admission arrangements determined by the Governors of Maiden Erlegh School which relate to the defined tie-breaker. I recommend that the School replace the determined tie-breaker with the tie-breaker used by all other co-educational secondary schools in Wokingham, which is as follows:

"Within criteria C and D priority will be given to the applicants whose permanent home address is nearest to the school in terms of radial distance"

Dated: 26<sup>th</sup> July 2011

Signed:

A handwritten signature in blue ink, appearing to read 'John Simpson', written in a cursive style.

Schools

Adjudicator: John Simpson