

DETERMINATION

Case reference: ADA2425

Objector: Northamptonshire County Council

Admission Authority: The Governing Body of Chacombe Primary School

Date of decision: 21 August 2013

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body of Chacombe Primary School.

I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways recorded in this determination.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Adjudicator by the schools admissions manager, on behalf of Northamptonshire County Council, the objector, about the admission arrangements (the arrangements) for Chacombe Primary School (the school), a Church of England (CE), voluntary aided (VA) school for pupils of age range 4 -11 years for September 2014. The objection is to the oversubscription criteria which give as the seventh criterion, preference for a school place to children attending the school's pre-school.

Jurisdiction

2. These arrangements were "ratified and signed" which I take to be determined under section 88C of the Act by the school's governing body which is the admission authority for the school. The objector submitted the objection to these determined arrangements on 3 May 2013. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
 - a. the objector's letter and form of objection dated 3 May 2013;
 - b. the school's response to the objection and supporting documents;
 - c. the faith body's, the Diocese of Peterborough (the diocese), response to the objection and supporting documents;
 - d. the Northamptonshire Council's, the local authority (LA), composite prospectus for parents seeking admission to schools in the area in September 2013 and 2012;
 - e. maps of the area;
 - f. copies of the minutes of the meeting of the governing body at which the arrangements were determined;
 - g. a copy of the determined arrangements; and
 - h. information about the pre-school.

The Objection

5. The objector argues that the inclusion of attendance at the pre-school in the oversubscription criteria for admission to the school is contrary to the Code in two aspects: firstly, that it is unfair, citing paragraph 1.8 of the Code: "Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation." and secondly, paragraph 1.9 e). that admission authorities, "**must not** give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation, including religious authority."

Other Matters

6. The first oversubscription criterion, for the arrangements for 2014 published on the school's website, refers only to looked after children and does not include previously looked after children as required by the Code, paragraph 1.7 "All schools **must** have oversubscription criteria for each 'relevant age group' and the highest priority **must** be given, unless otherwise provided in this Code, to looked after children and previously looked after children. Previously looked after children are children who were looked after, but ceased to be so because they were adopted (or became subject to a residence order or special guardianship order).

Background

7. The school is a small primary school. The published admission number (PAN) is 15. The head teacher reports that the school was undersubscribed in 2012 and will be for 2013. The oversubscription criteria in the admission arrangements for September 2013 and 2014 published on the school's website are as follows;

Oversubscription criteria

1. Applications for Looked after Children that is children in Local Authority care.
2. The Governors may admit up to one pupil per year group on social or medical grounds, where professionals have clearly identified that the school can fully meet the needs of the pupil. These applications must be accompanied by documentary evidence from appropriate professionals within the Health or Social Care services.
3. Children living with their parents/legal guardians in the village of Chacombe.
4. Children of worshipping members of either the Church of St Peter & St Paul, Chacombe; the Church of St Lawrence, Marston St Lawrence; the Church of All Saints, Middleton Cheney; the Church of St Peter, Greatworth; the Church of St Mary, Warkworth and the Church of St Mary the Virgin, Thenford.
5. Children who have an older sibling attending the school at the time of admission of the younger child.
6. Children of worshipping members of any Church that is a member of Churches Together in England, this includes the Church of England.
7. Children who attend Chacombe Pre-School.
8. Children of parents/legal guardians of other faiths, or none, who wish their child to be educated in a Church school and Christian environment.

8. The school has included this criterion in its admission arrangements since 2010. At the time of inclusion, the Code then in force, allowed in paragraph 2.67 "admission authorities that propose to give priority to children who attend the nursery or co-located children's centre nursery for nursery provision **should** ensure that families that live nearer the school, those who take up other nursery options or the free entitlement of the local provider, or those who have recently moved to the area, are not unfairly disadvantaged compared to other families". The head teacher reports that;

“The criterion being discussed was included in the Admissions Policy for 2010 onwards. This was first discussed with Governors in March 2008 and minutes show that approval from NCC and Diocese was being waited for before the criterion was added. Our minutes show the policy is then amended and brought to Governors and ratified in Sept 2008.”

9. The diocese confirms that this criterion was included in the oversubscription criteria at a time when it was, in some circumstances, permitted, saying: “This criterion first appeared in the Admission Policy for this school in 2010. In accordance with the Diocesan Board of Education Measure 1991 (referred to in para. 1.38 of the current School Admissions Code), the Board considered this criterion and was happy to approve it. Paragraph 2.67 of the 2009 Code allowed for the inclusion of a priority such as this, provided that other families were not unfairly disadvantaged. There is nothing explicit about nursery priority in the new Code. It does not appear in the list of unacceptable criteria in para. 1.9 It is the Board's view that the inclusion of this criterion within Chacombe Primary School's criteria, directly above final criterion, is entirely appropriate. It gives some priority to those who families who have already formed a link with the school, but sits below those who live in the village, or have siblings at the school, or are worshipping members of the church.”

10. A pre-school group operates on the site, the Chacombe Pre-School Group. The pre-school is a separate company. The head teacher, bursar and chair of governors sit on the pre-school committee. The sessions are £9.00 per session, a lunch session is £2. The sessions are:

- i. Monday, Tuesday, Thursday: 8.45am – 11.45 am, and 12.45 - 3.15 with a lunch session available from 11.45 to 12.15,
- j. Wednesday and Friday: mornings only 8.50am -12.00 noon with a lunch session available.

11. Parents may use their government funded entitlement of 15 hours per week .There are 20 places available for children between the ages of two and four. A registration fee of £10 in the form of a donation is required.

Consideration of Factors

12. I accept that the Code is silent on the matter of inclusion of pre-school/nursery provision in oversubscription criteria. I note also that the school is, at present, undersubscribed. I have considered the reasons given by the LA for the objection and the overall general requirement for admission arrangements as set out in paragraph 14 of the Code, that they **must** be clear, fair and objective. Oversubscription criteria are clearly only relevant when there are more applicants than places, but the admission arrangements must comply with the Code even if the school is undersubscribed.

13. The LA argues that the inclusion of a “nursery priority may be in breach of the Code” as paragraph 1.9 e) says a school **must not** “ give priority to children on the basis of any practical or financial support parents

may give to the school or any associated organisation, including religious authority.”

14. In this case, I consider the pre-school to be an associated organisation in the sense that I consider the term to be used in paragraph 1.9(e): it is based on the school site, school personnel sit on the management committee and it is named in the oversubscription criteria. From the prospectus for the pre-school sent to me it is clear that fees are charged directly from parents who are not eligible for, or require more than, the 15 hours of government funded child care. The pre-school can claim funds for 15 hours for each child aged three and four from the term after they reach the age of three, who attends the pre-school.

15. The information is not as clear as it might be, but while the nursery provision is by a commercial organisation, and fees are charged for those not eligible for the funding arrangements above, I accept that it is possible to attend the pre-school only for the government funded sessions.

16. While it states in its policies that parents are entitled to use the “government funded” entitlement there, the pre-school nonetheless charges fees. Parents might feel they have to use the pre-school to improve their chance of gaining a reception place and, in consequence, pay fees to “top up” the provision to meet their child care needs. I consider this to be financial support to an associated organisation and in breach of the Code.

17. Regardless of how the sessions are funded, a donation of £10 is required for registration. The donation has to be given to take up the pre-school place. I consider this to be financial support. I do not intend to comment on the amount required; my view is that it is a matter of principle. Requiring a donation is financial support and is in breach of the Code.

18. I have also considered whether there are other reasons that the inclusion of the pre-school group might be considered unfair, bearing in mind in particular that if the school became oversubscribed parents might feel obliged to take up a pre-school place to gain priority for Reception. Some parents do not wish their child to attend nursery or pre-school, preferring to keep them at home or leave them with a child minder.

19. I note the pre-school is open 38 weeks a year and, on its website states that it is open five days a week. I accept that it is open for parts of five days each week in term time. In addition, the admissions section of the pre-school prospectus states there is no guarantee of days or times of sessions. For a working or studying parent however, three full days and two mornings may be inconvenient to use and require finding alternative provision to supplement this or alternatively make it not possible to use at all. This difficulty will be compounded by the lack of assurance of stability of days and sessions.

20. I think to include a priority for a reception place for attending the pre-school provision that either may not be suitable because of hours or days

of sessions or desirable because parents have other preferences for their child, for example, remaining at home, is unfair.

21. The pre-school admission arrangements are reported as follows:

“Discretion will be exercised by the Chair of the Management Committee and another committee member who will consider each child on an individual basis. If we are oversubscribed the following will be given priority:-

1. Cases referred by the Church
2. Cases of social/ special needs (including referrals from Social Services etc)
3. Children in their pre-reception class year who are resident in the village of Chacombe
4. Children in their pre-reception class year who are siblings of children attending Chacombe Primary School.
5. Children in their pre-reception class year who are not resident in the village of Chacombe
6. Children of staff who work at the school whose children are two years but not yet three years of age
7. Children who have attained the age of two years.”

22. While there is no requirement for pre-school admission arrangements to comply with the Code, my view is that, if admission to Reception is in anyway dependent on gaining a place in the pre-school, the arrangements should be at the very least transparent and objective. In this case, admission is at the discretion of two members of the management committee with no explanation of how this discretion might be exercised nor opportunity for appeal. I have considered therefore whether it is unfair, with reference to paragraph 14 of the Code, to determine admissions into the school (for which admissions arrangements are regulated by legislation and the Code) by reference to attendance at the pre-school where the admission arrangements are not clear. I think that making admission to the school in any way dependent on attendance at the pre-school, in these circumstances, is unfair.

Conclusion

23. The Code is clear that admission arrangements may not give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation. The pre-school is an associated organisation which charges fees and there is a requirement for a donation to register. I consider this is financial support. The arrangements are in breach of the Code.

24. The pre-school offers child care for five mornings and three afternoons with no guarantee of session times or days. I think to include a priority for a reception place for attending the pre-school provision that either may not be suitable because of the pattern of provision available or not desirable because parents have other preferences for their child, for example, remaining at home, is unfair.

25. Admission to the pre-school is at the discretion of two members of the management committee with no opportunity to appeal. I consider that making admission to the school in any way dependent on the pre-school arrangements is unfair.

Determination

26. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body of Chacombe Primary School .

27. I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways recorded in this determination.

28. By virtue of section 88K(2), the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.

Dated:

Signed:

Schools Adjudicator: Miss Jill Pullen