

## **DETERMINATION**

**Case reference:** ADA 002277 and ADA002320

**Objector:** a parent and Pagham Parish Council

**Admission Authority:** West Sussex County Council

**Date of decision:** 31 August 2012

### **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 West Sussex County Council for Rose Green Infant School for admissions in September 2013.**

**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 a parent and Pagham Parish Council, the objectors, about the admission arrangements (the arrangements) for Rose Green Infant School, (the School), a voluntary controlled primary school for children age 4 – 7 years for September 2013. The objection is to the tiebreaker within the oversubscription criteria; that radial distance is not a reasonable measure for a catchment area where some parts are bounded by water on three sides.

### **Jurisdiction**

2. These arrangements were determined under section 88C of the Act by West Sussex Council, the local authority (LA), which is the admission authority for the School. The objectors made their objections to these determined arrangements on 31 May 2012 (parent) and 26 June 2012 (Pagham Parish Council). 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).

The documents I have considered in reaching my decision include:

- a. the objectors' forms of objection dated 31 May 2012 and 26 June 2012;
- b. the LA's response to the objections and supporting documents;
- c. the LA's composite prospectus for parents seeking admission to schools in the area in September 2012;
- d. maps of the area identifying relevant schools;
- e. confirmation of when consultation on the arrangements last took place;
- f. copies of the minutes of the meeting of 28 March 2012 of the Council at which the arrangements were determined;
- g. a copy of the determined arrangements;
- h. the online petition with 525 signatures supporting the objection;
- i. correspondence from the head teacher and chair of governors of the School; and
- j. the LA's application for a variation to the determined arrangements and supporting documents.

## The Objection

4. The objectors have identified several paragraphs of the Code which they believe have been contravened. I have summarised these as follows;
  - The oversubscription criteria are not suitable for the School as residents of Pagham are surrounded on three sides by water; consequently radial distance measures are unreasonable. Paragraph 14 of the Code says that : "In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective "
  - Another area within the LA (Shoreham Beach) has an oversubscription criterion that prioritises children in the part of the particular catchment that is bounded by water. The objectors cite paragraph 1.8 "Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly"
  - The catchment area is no longer reasonable as a new estate of residential housing (Rosewood estate) was built in the north east of the catchment area (90 Homes) which the objectors say contravenes paragraph 1.14 "Catchment areas **must** be designed so that they are reasonable and clearly defined."
  - The LA have not complied with the regulations and legislation of the Equality Act 2010 as they did not undertake any equality impact assessment (customer focus appraisal) in the admission arrangements

for the School when they made the decision to use the section 106 money for nursery places in another town rather than consider creating places within the catchment of the new housing. This is said not to comply with paragraph 1.1 of the Code which says, "Admission authorities are responsible for admissions and **must** act in accordance with this Code, the School Admission Appeals Code, other laws relating to admissions, and relevant human rights and equalities legislation."

5. The objectors have referred to other matters, for example a request that the published admission number (PAN) for the School be increased and that a similar consideration be given to the admission arrangements at Rose Green Junior School which fall outside this determination. In addition some aspects of the concerns raised are outside legal requirements concerning admissions and the School Admission Code; I cannot comment on those.

## Background

6. The objectors suggest that applicants who live in the west portion (the area around Pagham) of the School's catchment area should be given priority over other residents of the catchment area. They suggest that the catchment area be divided by a notional line which would give priority to pupils living to the west.
7. Pagham sits to the furthest westerly point of the School's catchment area. The sea is to the south and the western boundary is bordered by the wetlands of the Pagham Harbour Nature Reserve which lies to the west and curves round to the north. The consequence is that children can only easily travel east to school.
8. For 2012 entry the School was oversubscribed from within its catchment area, with 90 places being allocated and 12 children refused, 10 of those lived west of the proposed line. There were also three late 'in catchment' applications from families in Pagham. Those who were not allocated places were offered alternative schools. Those living in the west of the catchment area who did not secure a place at the catchment School were further away from alternatives than those in the east of the catchment area.
9. The LA was aware that the projected numbers of pupils in the Bognor Regis locality showed a higher number of pupils in the area starting school. Some of the contributory factors it indicates were fewer children going to private schools and more families moving into the area where previously retired people lived. The increase in numbers was not confined just to this area of the LA but was in many areas and indeed replicated the situation nationally. The initial projection of numbers of pupils for 2012 indicated that the demand for places would be similar to the previous year. The LA increased provision in a number of schools in the area to meet demand.
10. At the conclusion of the consultation for admission arrangements for September 2013 on 1 March 2012, school places had not been allocated for children starting school and the analysis of the geographic distribution had not taken place. When this work was undertaken it became clear to the

LA that a specific issue emerged in a part of the School's catchment area that had not previously presented a difficulty to the LA or to parents.

11. The LA has a mix of infant, junior and primary schools and first and middle schools. The oversubscription criteria that it will use for 2013 for the majority of its schools are, in summary,
  1. Looked after children and previously looked after children
  2. Children with exceptional social or medical needs
  3. Children who live in catchment area with siblings at the school
  4. Children who live in the catchment area
  5. Children outside the catchment area with siblings at the school
  6. Other children outside the catchments area.
  7. In the case of oversubscription in any category, priority is given to applicants who live nearest the school (measured by a straight line from school to the child's home address, using Ordnance Survey address point data from a central point in each building).

It is this use of measurement by a straight line from school to the child's home address that is the main complaint and cause of the objection.

### **Consideration of Factors**

The factors I have considered include the following:

The availability of alternative provision

12. The objectors argue that there is no reasonable alternative provision; that if they cannot gain admission to the School they can only travel to the east, travelling considerably further than other families who could travel in any direction to the nearest school.
13. The LA recognised that more places were needed in the Bognor Regis area and increased Edward Bryant Primary School by one form of entry. St Mary's Roman Catholic School agreed to take additional pupils as did Nyewood Infant Church of England Aided school. Nyewood took the extra pupils from the School's catchment as it was the next nearest school with space.
14. It is clear from studying a map of the area that, when applications for places in the catchment area exceed the number of places on offer, there will be a difficulty for families to the west. The LA's oversubscription criterion of radial distance, that is, a straight line from the school to the child's home address obviously causes difficulty if the distance is over water as it would be in measurements to schools to the west of Pagham. I accept that this reduces considerably the options for school places for families in the area. I accept therefore that the oversubscription criteria are not suitable for the

School as residents of Pagham are surrounded on three sides by water; consequently radial distance measures are unreasonable. Paragraph 14 of the Code says that : “In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective “

#### Travel and Access

15. The objectors argue that travel to alternative schools even to Nyewood Infant School by public transport involves two buses and travelling for over an hour involving travel for parents on eight buses a day. The objectors suggest that the cost of this is £125 per month. Travelling further in to Bognor would take even longer and involve more expense. The minutes of the meeting on 21 June 2012 on managing pupil numbers attended by head teachers of schools in the area and LA officers, show the travel problems are made worse by the fact that funding is not available unless the children are of statutory school age (five plus) and that some parents have sibling children at different schools across town.
16. While travel to more distant schools is an issue for many parents I accept that the travel difficulties of parents in Pagham are significantly greater than others in the catchment area as they must travel further to available schools.

#### Impact of the arrangements on other schools;

17. The LA has increased its provision in the area. It reports that all schools in the area are full for September 2012 and that changes in the School catchment area will not result in any other schools being undersubscribed. It identifies three schools in particular:
  - Edward Bryant Primary increased by one form of entry because of the increase in pupil numbers in central Bognor Regis for 2012 and beyond. The school is always oversubscribed and its increase in numbers does little to ease the pressure for places at the School.
  - St Mary’s Roman Catholic School increased its numbers because of the extra Catholic families moving into the Bognor Regis area.
  - Nyewood Infant Church of England School was undersubscribed in the past, but due to the increase in the number of pupils in Bognor Regis including the Rose Green area this school is now full for September 2012.

#### Levels of oversubscription

18. The School was oversubscribed by 19 in 2011; the last allocated distance was 1576.44 metres from the school in the out of area category. In 2012 it was oversubscribed by 12 in catchment children and three late in catchment children all of whom lived in the Pagham area.

## Impact of new housing developments

19. The objectors argue that a new estate of residential housing (Rosewood estate) was built in the north east of the catchment area (90 Homes) which will contribute to over subscription in the catchment area. In addition they argue that the LA has not complied with the regulations and legislation of the Equality Act 2010 as it did not undertake any equality impact assessment (customer focus appraisal) in the admission arrangements for the School when it made the decision to use the section 106 money for nursery places in another town rather than consider creating places within the catchment of the new housing.
20. The LA has explained its use of this funding on nursery places within the Bognor Regis area.
21. While I accept that the building of additional housing in a catchment area may make additional demands on school places and may be contrary to 1.14 "Catchment areas **must** be designed so that they are reasonable and clearly defined"; neither party has provided sufficient evidence for me to make a judgement on this matter. In addition I do not propose to comment on the issue of 'section 106 monies' as this aspect of the objection I consider falls outside of legal requirements concerning admissions and the School Admission Code.

## Consultation with the School

22. Evidence from the head teacher and the chair of governors shows that they are willing to accept a proposed change to the catchment area, giving priority to families in the west and have been consulted on the design of the proposed area. They are unwilling to increase the admission number of the School. The chair of governors writes in her letter 14 June 2012 that this is because of limited space for additional accommodation and the consequent reduction in facilities for pupils.

## Similar arrangements

23. The objectors argue that another school in West Sussex has a similar circumstances and a division of its catchment area; that area within the LA (Shoreham Beach) has an oversubscription criterion that prioritises children in the part of the particular catchment that is bounded by water.
24. The LA argues that the circumstances of these arrangements were different in that it was a First School that became a Primary School and the site is restricted in size.
25. While the LA argues that it endeavours not to have too many variations to the oversubscription criteria, its admission arrangements for Shoreham Beach School give priority to those living east of Ferry Road over those living west of Ferry Road and can reasonably considered a precedent for the objectors' request.

26. I agree with the objectors that such an arrangement in a catchment area elsewhere in the LA would seem to be unfair and unreasonable to residents, if refused in this area and is contrary to paragraph 1.8 of the Code “Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly.” The use of the distance tie breaker is unfair in that it disadvantages unfairly those families for whom there are no alternative schools other than to the east.

#### Views of the LA

27. The LA holds a database of children which is pre-populated with information from the Child Health Bureau and Early Years providers. Looking at maps and addresses for those children in the catchment area over the next three years, the arrangement requested by the objectors would give 18 - 24 children the priority each year.

28. The LA has applied to the Schools Adjudicator for a variation to the admission arrangement for 2013/14 to take account of the change in circumstances and this objection. It has also advised me that it proposes consulting on the position of sibling priorities within its admission arrangements for 2014.

#### Conclusion

29. The number of pupils in the area is increasing. The LA has sought to accommodate these extra pupils by increasing the number of places at three schools. When it made its initial provision for additional places it was not aware of the geographical allocation of families. It has become clear that if families in this locality cannot gain admission to the School they can only travel to the east, travelling considerably further than other families who could travel in any direction to the nearest school.

30. I therefore consider that the arrangements contravene;

Paragraph 1.8 of the Code “Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly” in that the tie breaker does unfairly disadvantage some families.

Paragraph 14 of the Code says that: “In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective “as the allocation of school places is not fair in that the geographical constraints on the allocation of places for children in Pagham have not been sufficiently taken into account in determining the arrangements for the school.

31. I uphold the objection to the admission arrangements for the School determined by West Sussex Council.

## **Determination**

32. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by West Sussex Council for admissions in September 2013.
33. By virtue of section 88 K (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.

Date: 31 August 2012

Signed:

Schools Adjudicator: Ms Jill Pullen