

DETERMINATION

Case reference: ADA2482

Objector: Somerset County Council

Admission Authority: The proprietor of Brookside Community Primary School

Date of decision: 7 October 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 proprietor of Brookside Community Primary School.

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 Schools Standards and Framework Act 1998, (the Act), an objection has been referred to the Adjudicator by Somerset County Council, the objector, about the admission arrangements (the arrangements) for Brookside Community Primary School, (the school) a 3-11 academy school, for September 2014. The objection is to criterion 4 of the school's oversubscription criteria which give priority to "children enrolled at Brookside Nursery who have attended for at least ONE year for a minimum of 15 hours per week prior to the time of admission".

Jurisdiction

2. The terms of the academy agreement between the proprietor and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the proprietor, which is the admission authority for the academy school, on that basis. The objector submitted the objection to these determined arrangements on 27 June 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 form of objection dated 27 June 2013;
 - b. the school's response to the objection and supporting documents;
 - c. the council's composite prospectus for parents seeking admission to schools in the area in September 2013;
 - d. confirmation of when consultation on the arrangements last took place;
 - f. copies of the minutes of the meeting at which the proprietor of the School determined the arrangements;
 - g. the school's Ofsted inspection report of July 2013; and
 - g. a copy of the determined arrangements.

The Objection

5. The council has objected to the school prioritising attendance at an early years setting as part of the school's oversubscription criteria. It says that this contravenes section 1.9(l) of the Code). Paragraph 1.9(l) says that schools must not name fee paying independent schools as feeder schools. The objection also states that for parents not successful in gaining a nursery place there is no right of appeal as there is for admission to reception and this makes the process fundamentally unfair and lacking in transparency.
6. The school's arrangements state that, following the allocation of places to children with statements that name the school, first priority will be given to looked after and previously looked after children followed by siblings and children fulfilling the distance criterion. Criterion 4 is "children enrolled at Brookside Nursery who have attended Brookside Nursery for at least ONE year for a minimum of 15 hours per week prior to the time of admission."

Background

7. The school converted to become an academy school on 1 July 2011. It is a large primary school with a planned admission number of 60. A children's centre shares the school site. The children's centre offers childcare for babies as well as provision for toddlers and pre-school children.

8. The children's centre admissions policy states that; "Childcare places are allocated on a first come first served basis and in addition we offer supported childcare, two year old funded and discretionary places where appropriate." For children below three years of age, a non-refundable deposit of £50 per child is required at the time of reservation. Sessions run between 8 am and 6 pm. The rate for pre-school children will be £3.70 per hour in 2013/14. Some children exceed the 15 funded hours and pay for their additional sessions.
9. There are 58 full-time places available. In late August there were 48 children admitted for September 2013, a mixture of babies, toddlers and pre-school children. Some of these were due to start in September, but others were not due to start until later in the year.
10. The school's admission arrangements were consulted on for eight weeks from 21 November 2012. The governors of the academy considered the outcome of the consultation and determined the arrangements at a meeting on January 28 2013. No objections were received during the consultation period and the council first voiced concern about criterion 4 on 19 June 2013.
11. The chair of governors of the school has said that the arrangements were given careful consideration and that the prioritisation of children attending the nursery has therefore been placed as a low criterion in fourth place. The criterion is designed to respond to the wish of parents for all through schooling in a safe, secure and familiar setting.

Consideration of Factors

12. The previous School Admissions Code was specific on the subject of giving priority for admission to the Reception Year (YR) for attending specified nursery provision and set terms to be met in doing so, but the current Code that came into force in February 2012 is silent on this matter.
13. In this case, the school has argued that the nursery is integrated within buildings that form part of the academy complex. It is staffed by teachers and assistants who are employees of the academy. There is a range of activities that integrate the children into the school on a regular basis. The cost centre sits within the academy budget and is subject to the same financial constraints as the rest of the academy. It is not disputed that some children pay for childcare or for additional nursery sessions.
14. The nursery is clearly a pre-school within a children's centre. It is not a school within the legal definition of a school. It cannot therefore be a fee paying independent school so paragraph 1.9(l) does not apply.
15. Admission to the nursery is on a first come first served basis. There is no mention in the nursery's admissions policy of an appeals process. These arrangements would not be lawful for admission to a school. The inclusion of a nursery priority criterion in the school's arrangements

means that children can gain priority for admission to the school on the basis of having first gained admission to the nursery against arrangements that would not be lawful for the school itself. The arrangements for the nursery are not subject to the Code, as rational as the basis for the arrangements for the nursery may be; I have to consider their potential impact in the light of the Code's requirements for admission to school of children on reaching compulsory school age. I do not accept that it is fair that attending the nursery gives priority for admission to the school.

16. It is not compulsory for parents to make use of any nursery provision, but they must apply for places for their children when compulsory schooling begins. Attending the nursery may not be possible for all families in the catchment area. They may choose not to use the nursery for a range of reasons. Parents may, for instance, work shifts and the provision would not suit their needs, or they may wish to use the nursery but not succeed in gaining a place. Some children may also have gained a place in the nursery by their parents paying for that provision. Paragraph 14 of the introduction to the Code sets out a general requirement for fairness and paragraph 1.8 says that oversubscription criteria **must** be procedurally fair. This criterion breaches these requirements.

17. I have also considered paragraph 1.9(e) of the Code which says that schools 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". I note that for children attending the nursery prior to reaching the age of three, parents must pay a non-refundable deposit to the nursery to reserve a place. Depending on how much time a child attends the nursery after reaching the age of three additional payments may be required to top up the early years entitlement funding. The parents of some children will have paid for provision at the nursery. As I have concluded that this criterion would contravene the Code for other reasons, my views on paragraph 1.9(e) are not the basis of my decision on this case.

Conclusion

18. I do not uphold the objection under paragraph 1.9(l) of the Code since the Brookside nursery is not a school. I uphold it under paragraph 14 of the introduction to the Code and paragraph 1.8 of the Code which set out the Code's requirements for fairness for admission arrangements.

Determination

19. 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 proprietor of Brookside Community Primary School.

20. 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: 7 October 2013

Signed:

Schools Adjudicator: Mrs Janet Mokades