

DETERMINATION

Case reference: ADA/002447

Objector: Somerset County Council

Admission Authority: The Governing Body of St Joseph's Catholic Primary School, Burnham on Sea, Somerset.

Date of decision: 2 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 St Joseph's Catholic Primary School.

I have also considered the arrangements in accordance with section 88I(5). I determine that the school's supplementary information form does not entirely conform with the requirements relating to admission arrangements.

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 Somerset County Council (the council), about the admission arrangements (the arrangements) for St Joseph's Catholic Primary School (the school), a 3-11 voluntary aided primary school for September 2014. The objection is to the priority given to children who attend the school's nursery in criteria 3a, 4a, 7a, 8a, 9 and 12 of the school's oversubscription criteria.

Jurisdiction

2. These arrangements were 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 18 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).

The documents I have considered in reaching my decision include:

- a. the objector's form of objection dated 18 June 2013;
- b. the school's response to the objection and supporting documents;
- c. the Clifton Diocese's (the diocese) response to the objection;
- d. the council's composite prospectus for parents seeking admission to schools in the area in September 2013;
- e. confirmation of when consultation on the arrangements last took place;
- 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. the Ofsted inspection report of 2008 and interim assessment of 2011.

The Objection

4. The council has objected to the school prioritising an early years setting. After prioritising children with statements naming the school, looked after and previously looked after children of the faith and those with medical and social needs, the oversubscription criteria give priority to;

3) Baptised Catholic children who;

a) live inside the parishes of Our Lady and English Martyrs, Burnham on Sea and adjacent parishes and attend St Joseph's Nursery.

b) live inside the parishes of Our Lady and English Martyrs, Burnham on Sea and adjacent parishes.

4) Baptised Catholic children who;

a) live outside the parish of Our Lady and English Martyrs and who do not have a Catholic primary school serving the parish in which they live who attend St Joseph's Nursery.

b) live outside the parish of Our Lady and English Martyrs and who do not have a Catholic primary school serving the parish in which they live.

5) Looked After Children – Children who are in the care of a Local Authority or have previously been and are now formally adopted

6) *Children who will;*

a) have a sibling attending the School at the time of their admission and who live at the same address and attend St Joseph's Nursery.

b) have a sibling attending the School at the time of their admission and who live at the same address.

7) *Children who;*

a) are baptised into other Christian faiths living in the Parish of Our Lady and English Martyrs, Burnham on Sea and adjacent parishes whose parents are a member of their church and the child attends St Joseph's Nursery.

b) are baptised into other Christian faiths living in the Parish of Our Lady and English Martyrs, Burnham on Sea and adjacent parishes whose parents are a member of their church

8) *Other baptised children living in Somerset who attend St Joseph's Nursery.*

9) *Other baptised children living in Somerset*

10) *Children of staff who have been employed at the school for 2 years or more as at the closing date of (dtba by local authority) and children of staff who have been recruited to fill a vacant post for which there is a demonstrative skills shortage.*

11) *Children living closest to the school who attend St Joseph's Nursery. (The measurement will be based on a straight-line distance from home to school using the LA's GIS mapping system).*

12) *Children living closest to the school. (The measurement will be based on a straight- line distance from home to school using the LA's GIS mapping system).*

5. The council maintains that these arrangements contravene paragraphs 1.9(e) and 1.9(l) of the Code. These paragraphs prohibit giving "priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation" and "naming fee-paying independent schools as feeder schools". In support of the objection, the council cites recent determinations by schools adjudicators. One concludes that giving priority for attendance at an attached nursery for which fees are payable is not permitted by the Code. The other rules 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".

Other Matters

6. An admission authority is permitted, as set out in paragraph 2.4 of the Code to have a supplementary information form (SIF) in which parents are asked to provide information that is necessary to process applications. Only information that has a direct bearing on decisions about oversubscription criteria can be requested. The school's SIF which parents are asked to submit has two separate columns asking for the names of the father and mother of the child. The next row asks for addresses and says in brackets (Give both addresses if different). The form does not specifically ask for the signatures of both parents, which is prohibited under paragraph 2.4 e) of the Code, but as currently set out, it does suggest that information which does not have a direct bearing on oversubscription criteria is being requested. It can only ask for the address at which the child lives and the name of one parent.

Background

7. The school's nursery class caters for children aged 3-4 years on a part-time basis during term times. It has 40 part-time places. Children are eligible to start nursery in the term following their third birthday. Places are allocated on a first come, first served basis.
8. The governors have stated that the original decision to insert nursery attendance oversubscription criteria in 2010 was taken on the advice of the director of schools and colleges then in post at the diocese. This oversubscription criterion was discussed by the school's governing body in May 2010 for inclusion in the 2012 admissions policy which was due to go to consultation. It has been part of the school's admission arrangements since 2012.
9. However, there has been a staffing change at the diocese since that time and the current diocesan director of schools and colleges has written to the OSA stating that she was unaware of the concerns raised, since neither the school nor the local authority had notified the diocese. The governors say that they tried to seek advice from the diocese but without success. It seems that emails were mislaid and communication broke down. The diocesan director states that the diocese had not known of the recent rulings and advice related to giving precedence to pupils from a nursery and that, had they known of this or of the objection, they would have advised the school to amend its policy.

Consideration of Factors

10. I have considered the reasons given by the council for its objection and also considered the arrangements against the general requirements set out in the Code. The school introduced priority for children attending the nursery class against a provision in the previous version of the Code that was specific in permitting schools to give priority to children

who attend their nursery classes alongside provisions that should be taken into account and providing that priority did not disadvantage other local families. The current Code is silent on this issue.

11. The school was judged to be outstanding by Ofsted at its last inspection in 2008. Its interim assessment on 26 April 2011 confirmed its status. It is no surprise that the school is over subscribed.
12. The governors of the school believe that attendance at the nursery, which is on the school site, gives children the opportunity to interact regularly with daily school life. They also believe that it provides a good introduction to the school's ethos and atmosphere and so aids their later integration. This may well be the case, but the admission arrangements for admission to the reception year must comply with admissions law and the Code.
13. The nursery offers the state funded 15 hours a week provision plus the opportunity to book additional sessions at a cost commensurate with local childminding rates. It also provides a fee paying breakfast club and after school sessions. The governors state that people paying for the nursery either through the state funded early year's entitlement or for additional sessions are not giving financial support to the school as the money is ring fenced for the nursery. The school does not subsidise the nursery, nor does the nursery subsidise the school.
14. It is clear that on occasion money will be paid to the nursery by parents for top up provision. This covers the costs of the provision. It does not provide financial support to the school. I do not believe that this contravenes paragraph 1.9(e) of the Code and it is not determinative in making my decision.
15. The admission arrangements for the nursery are not covered by the Code. They are different from those of the school and this is permitted. The difficulty here arises when children are securing priority for entry to the school on the basis of attendance at the nursery, admission to which is not regulated by the Code.
16. In this case, admission to the nursery is on a first come first served basis. A waiting list is held in strict order of application. There is no mention of a right of appeal on the website. Under the Code, these arrangements would not be lawful for a school to use to allocate places in the reception year.
17. There are 40 part time places in the nursery. Not all of these children will be of an age to enter reception each year although last year's figures demonstrate that most will be. The school has a published admission number of 34. For September 2013, there were 84 preferences expressed for the school. Five places were allocated on criterion 3a, ten on 6a, four on 8 and eleven on 11. Thus only four places out of 34 went to children who did not attend the nursery. Of these, two were siblings and two were admitted under separate faith criteria, one being in parish and the other baptised and in county.

18. Desirable as it may well be both educationally and emotionally for children to attend the school's nursery there are families for whom this may not be possible or desirable. This could be because of the provision they need pre compulsory school age, or they may prefer other nursery provision, or they may wish their child to attend the nursery, but are unsuccessful in securing a place. For these families whose child does not attend the nursery, the chances of their children gaining a place in this outstanding school are very low indeed.
19. Paragraph 14 of the introduction to the Code states that admission authorities **must** ensure that the practices and criteria used to decide the allocation of school places are fair, clear and objective. In this case, the criteria make it much more difficult for parents who are unable or choose not to or are unsuccessful in gaining a place at the nursery to gain places in the school. In effect in this case, admission to the school at the beginning of compulsory schooling is strongly or entirely dependent on the provision a parent chooses for non-compulsory nursery provision. In my view this is hardly fair.
20. Furthermore, the admission of children to the nursery on a first come first served basis means that children achieve priority for that provision at the school against arrangements that would be unlawful for admission to the reception year. There is no appeal process for those who are unsuccessful in gaining a place. To then give priority for admission to the school for nursery children cannot in my opinion be regarded as meeting the requirement for arrangements to be fair or clear.
21. The governors cite the educational and emotional advantages to children in having continuity when moving from the nursery into compulsory education. I accept that it is this, rather than any practical or financial advantage as prohibited in 1.9(e) of the Code, that is the rationale for the current criterion. I do not base my decision on whether the arrangements breach paragraph 1.9(e) of the Code. The objector also cites paragraph 1.9(l) of the Code implying that the nursery in this case is a fee paying independent school. The nursery class is just that i.e. a class, not a school, and is not a fee paying school. I do not therefore uphold this objection under paragraph 1.9(l). My consideration of the arrangements under the general requirement for fairness set out under paragraph 14 of the Introduction to the Code is that the arrangements do not comply with this requirement.

Conclusion

22. The governors of this outstanding school believe that there are benefits for both the children and the school if children attend the nursery. This is the case, but since not all children are able to do so, the Code's requirement for fairness must come first. The current arrangements mean there is almost no chance for children who do not attend the nursery to gain places at this outstanding school. For the reasons given above I therefore uphold the objection.

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 St Joseph's Catholic Primary School.

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Dated: 2 August 2013

Signed:

Schools Adjudicator: Mrs Janet Mokades