

DETERMINATION

Case reference: ADA2431

Objector: Northamptonshire County Council

Admission Authority: The Governing Body of St Loys Primary School
Weedon Lois

Date of decision: 19 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 Loys 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 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 St Loys Primary School (the school), a Church of England (CE), voluntary aided school (VA) for pupils of age range 4 -11 years for September 2014. The objection is to the inclusion of a criterion giving priority for a school place to children attending a pre-school group within the school's over subscription criteria.

Jurisdiction

2. These arrangements were determined within the timescale required 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;
 - c. Northamptonshire County Council's, the local authority (the LA) composite prospectus for parents seeking admission to schools in the area in September 2013 and 2012;
 - d. maps of the area;
 - e. confirmation of when consultation on the arrangements last took place which the LA took on behalf of all its schools;
 - f. an account from the head teacher of how the arrangements were determined;
 - g. a copy of the determined arrangements; and
 - h. information about the St Loys Pre-School.

The Objection

5. The objection is to the inclusion of a criterion related to pre-school placement in the oversubscription criteria. The objector refers to paragraph 1.8 of the School Admissions Code:

*Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admissions authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child. Admissions arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.*

And to paragraph 1.9 e) of the School Admissions Code:

*It is for admission authorities to formulate their admissions arrangements, but they **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."*

Background

6. The school is a small, rural, primary school that is undersubscribed for the first two rounds of offers for 2013. The LA's Starting School booklet for 2012 and 2013 show a number on roll as approximately 85 and the published admission number (PAN) is 15. The head teacher reports the current number on roll as 102 with 14 pupils in the reception class.

7. The oversubscription criteria for September 2014 are in summary:

1. A 'looked after child' or a child who was previously looked after but immediately after being looked after became subject to an adoption, residence, or special guardianship order.

A looked after child is a child who is (a) in the care of a local authority, or (b) being provided with accommodation by a local authority in the exercise of their social services functions (see the definition in section 22(1) of the Children Act 1989).

2. The Governors will admit children on social or medical grounds, where professionals have clearly identified that the school will best meet the needs of the child (These applications must be accompanied by documentary evidence from the local authority or relevant agency.).

3. Children of parents/guardians resident in the ecclesiastical parish of Weedon Lois, served by the church of St Mary and St Peter, with Weston and including the hamlet of Plumpton (see residency definition).

4. Children of parents/guardians living in the ecclesiastical parish of Wappenham, served by the church of St Mary the Virgin, who are worshipping members of the Church of England or another member of Churches Together in England.

5. Children who have a sibling who will be continuing to attend the school at the time of admission of the younger child

6. Children attending the St Loys Pre School.

7. Children of a parent(s)/legal guardian(s) who are worshipping members of the Church of England or another member of Churches Together in England, through attendance.

8. Children of a parent(s)/legal guardian(s) of other faiths or none, who wish their child to be educated in a Church school and Christian environment.

8. The diocese comments as follows;

"This criterion first appeared in the Admission Policy for this school this year. 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 St Loy's Primary School's criteria, placed in a low position, 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 local church."

9. There is a pre-school group based at the school. Ofsted, which inspects the pre-school as childcare on non-domestic premises, described the provision as 'outstanding'. The school receives a rent of £200 per term for the facility. Fees are £11.40 per session. A maximum of 17 children may attend. There is some information for parents about the Free Entitlement Funded Hours on the pre-school website.

10. The admission arrangements of the pre-school are shown as follows;

"We arrange our waiting list in birth order. In addition, our policy may take into account the following:

the vicinity of the home to the setting; and

siblings already attending the setting.

We keep a place vacant, if this is financially viable, to accommodate an emergency admission."

11. The sessions are shown as follows on the website

MON	TUES	WEDS	THURS	FRI
9-12	closed *	9-12	9-12	9-12
12-12.30	closed *	12-12.30	12-12.30	12-12.30
12.30-3.30	closed *	12.30-3.30	12.30-3.30	closed *

*subject to change or enough carers request. The application form provides space for parents to indicate the sessions they would like for their child.

Consideration of Factors

12. I accept that the Code is silent on the inclusion of attendance at pre-school/nursery classes in oversubscription criteria. I see that the school is, at present, not oversubscribed; but I must weigh matters as if the school was oversubscribed and the criteria were being applied. Clearly oversubscription criteria only apply if there are more applicants than places. I have considered the reasons given by the LA for the objection and sought to examine the factors relevant to the position of nursery classes in the context of general requirement for admission arrangements as set out in paragraph 14 of the Code that they **must** be clear fair and objective.

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 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, including religious authority.”

14. There is a proposed schedule of agreement for the provision of the facility for St Loys Pre School play group. The governors agree to provide the facility for an agreed rent of £200 per term, fixed for the first three years, providing security of tenure for a period of at least 10 years. In addition the governors agree to “support and promote the setting and provision (eg signpost parents towards it).”

15. In considering whether the pre-school is an associated organisation, I note that in addition to the agreement above, it is based on the school site, school personnel sit on the management committee and it is named in the oversubscription criteria. I am of the view that the pre-school is an associated organisation in the sense that I consider the term to be used in paragraph 1.9e) of the Code.

16. The pre-school offers “Free Entitlement Funded Hours” for which it can claim funds for 15 hours for each child aged three and four years who attends. In addition it charges “11.40 per session payable half termly in advance and a “flexibility hours” option enabling a parent to leave their child at 8.30 am (instead of 9.00) and pick up at 12.30 (instead of 12.00); this service is £5 per day booked in advance or £7.50 if used ‘ad hoc’. It costs £2.10 per day for a child to eat their own packed lunch on the premises.

17. While it is clear from the both its policies and on its website that parents are entitled to use the “government funded” entitlement there, the pre-school nonetheless also charges fees. Parents feeling obliged to take up a pre-school place to gain priority for Reception, as there are more nursery places than reception places may well, depending on their circumstances, then be obliged to pay fees to “top up” the provision to meet their child care needs. I consider the payment of fees to be financial support to an associated organisation and in breach of the Code.

18. In addition, I consider that taking rent for the premises is income to the school, the source of which, the pre-school, the governors “promote and support”. I accept that this rent may not be profit but is coming indirectly from parents and consider this a further breach of paragraph 1.9 e) of the Code as

it too constitutes financial support.

19. I accept that the school and the diocese have considered the implication of their decision and have sought to give priority to families who live in the locality, sibling connection and membership of relevant churches in advance of children attending the pre-school. Admission authorities may give priority to certain pupils and the Code makes some of these groups, for example, siblings, explicit. I agree that the Code is silent on the matter of nursery provision and that no conclusion of fairness or unfairness should be drawn from this silence.

20. However, attending nursery or pre-school is not obligatory and parents may make choices about whether or not their child should attend. The pre-school operates sessions term-time only, 9.00 am to 3.30 pm for three days a week, half a day on Friday and not at all on Tuesday. Part-time provision may be too difficult to organise for some who seek more than this, for example working or studying parents. Not all parents may be willing or able to take up a place at the pre-school because of these circumstances, but when considering that there are 17 nursery places and the school PAN is 15 may feel some pressure to do so.

21. I consider the criterion confers an unfair advantage on children whose parents can take advantage of a pre-school place in comparison to those whose parents are not willing or able to do so.

22. I have read, though not formally considered, the admission arrangements for St Loys Pre School. They do not comply with the Code, though I acknowledge that compliance with the Code is not required for such provision. I note, for example, there is no right of appeal shown as one would see for school admissions. Admission is by date of birth order; account may be taken of siblings or vicinity. I consider these arrangements lack transparency. If the school were oversubscribed, admission could, for some children, be dependent on admission to the pre-school via these arrangements. I consider that making admission to the school dependent on attendance at provision where the arrangements lack transparency and objectivity is unfair and contrary to paragraph 14 of the Code.

Conclusion

23. There is no specific provision either in the legislation or in the Code which deals with the question of giving priority in admissions on the basis of having attended a particular nursery or pre-school. I have therefore considered those factors I consider pertinent.

24. I consider the inclusion of an independent fee paying pre-school group at which parents may feel obliged to “top up” fees and from which the school derives income to be contrary to paragraph 1.9 e) of the Code.

25. I consider the criterion confers an unfair advantage on children whose parents can take advantage of a pre-school place in comparison to those whose parents are not willing or able to do so, so it is not compliant with the Code.

26. I consider that to have admission to the school in anyway dependent on unregulated admission arrangements of the pre-school is unfair.

27. My conclusion, therefore, is that taking all these considerations together these arrangements giving priority for attending the pre-school are not compliant with the Code.

Determination

28. 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 Loy's Primary School.

29. 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: 19 August 2013

Signed:
Schools Adjudicator: Miss Jill Pullen