

DETERMINATION

Case reference: ADA/2408

Objector: A parent

Admission Authority: The Board of Directors of Rush Common Academy Trust, Abingdon, Oxfordshire

Date of decision: 21 June 2013

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for Rush Common Primary School determined by the Board of Directors for Rush Common Academy Trust.

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 of a pre-school child, about the admission arrangements (the arrangements) for Rush Common School (the school), an academy school with age range 5 - 11 for September 2014. The objection is to a change made to the admission arrangements that gives priority to out of catchment area siblings over catchment area pupils without a sibling in the school in the oversubscription arrangements.

Jurisdiction

2. The terms of the academy agreement between the Board of Directors 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 Board of Directors, which is the admission authority for the academy school, on that basis. The objector submitted her objection to these determined arrangements on 28 March 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 email of objection dated 28 March 2013;
 - b. the school's response to the objection and supporting documents;
 - c. Oxfordshire County Council's (the council's) response to the objection and supporting documents;
 - d. the council's composite prospectus for parents seeking admission to schools in the area in September 2013;
 - e. maps of the area identifying relevant schools;
 - f. confirmation of when consultation on the arrangements took place;
 - g. copies of the minutes of the meeting at which the Directors of the Academy Trust determined the arrangements; and
 - h. a copy of the determined arrangements for 2014.

The Objection

5. The objection is about the change made to the oversubscription criteria and it raises concern about the way that the school conducted its consultation about the proposed changes. It also refers to the lack of communication with the objector after the decision had been made.
6. During the consultation period a public meeting was held at the school about the changes and only four parents attended. A total of eight written comments were received in response to the consultation. The objector argues that the advertising put in place for the consultation and the meeting was insufficient and that if the school had placed posters about the meeting in the local shops and at other local places there would have been a greater number of people who would have attended the meeting. The objector also criticises the way one of the directors present at the meeting explained that "we must look after our own". She points out that this particular director has a vested interest in the change because he has a child who will benefit from it. Once the decision for change had been made the school did not inform the objector about the decision made although a letter was written to inform parents who already had children at the school.
7. The objection to the oversubscription criteria concerns the change made to the arrangements that give a higher priority for siblings living outside the catchment area than children without a sibling in the school living in the catchment area.

Background

8. The school became an academy on 1 March 2012. The admission arrangements for 2013 will have been determined before it became an admission authority so the arrangements were the council's admission arrangements and oversubscription criteria used by most of the schools in the area. The school has a published admission number of 60. The council's co-ordinated admissions document shows that in 2012 the 60 places were allocated to 59 pupils from within the designated area and one pupil with special educational needs. 32 pupils were refused admission and there were no appeals for places. In 2013 one place was allocated on the basis of a statement for special needs, 24 places were allocated to catchment area children with siblings, 35 places were allocated to catchment area pupils. There was one catchment area pupil not allocated a place and two out of catchment pupils with a sibling who were not allocated places. A further 22 out of catchment area children unsuccessfully sought places at the school.
9. The oversubscription criteria for 2012 and 2013 admissions have looked after and previously looked after children as the first criterion; disabled children with particular access needs as the second criterion and catchment area children as the third criterion with a sub-priority, if required, of catchment area children with a sibling in the school at the time of admission taking priority over other catchment area children. The last criterion comprises out of catchment area children, with those with siblings in the school at the time of admission having priority over children without siblings. Should it be necessary to rank the children within any particular category, distance using the council's designated route measurement system is used with children living closest to the school taking priority. There is a tie breaker system described for use if necessary.
10. For 2014 admissions, the Board of Directors of the school held a consultation between 20 December 2012 and 1 March 2013 about a proposal to change the school's admission arrangements to give priority for out of catchment children with a sibling in school at the time of admission over in catchment area children without a sibling in school. This was the only change proposed and in all other respects the criteria remain the same as before. A public meeting was held on 6 February which was poorly attended. The board met on 13 March 2013 and at this meeting determined the arrangements for 2014.

Consideration of Factors

11. The objector comments about the nature of the consultation and points out that there was little engagement from the wider community. She suggests that this is because the consultation was advertised on the council's and the school's websites and not in local shops and health centres. She suggests that there might have been a larger response if this advertising had been carried out.

12. The Code in paragraph 1.44 sets out the groups with whom admission authorities **must** consult. The groups listed include “a) parents of children between the ages of two and eighteen; b) other persons in the area who in the opinion of the admissions authority have an interest in the proposed admissions.....”. The school reports that it followed the locally established system for consultation by placing the information on the council’s consultation website. The proposals were also clearly displayed on the school’s website and parents at the school were informed via letters home. The public meeting was advertised in the local paper.
13. There may have been a greater participation if the school had advertised the consultation as the objector suggests, however in following the strategy that it did, I am satisfied that the school has complied with the requirement of paragraph 1.44 of the Code.
14. In her objection, the objector makes reference to the language used by one of the directors at the meeting where he referred to the wish to “look after our own”. In their response to these comments, the chair of the board of directors and the headteacher state that they spoke to the director in question about the comment and he did not recall stating the phrase quoted, nor do the other directors present. However, they reply that if he had made the comment it would not have been intended to be offensive and would need to be considered in context. Any reference to “own” would be a reference to families that are currently part of the school community (not his own children) and the belief that once a family is part of the school community it causes significant distress and trauma to the family if the children are part of different schools. They further state that the thinking that led to the change in the admission arrangements was driven by this and also by the recognition that where parents have to take their children to two different schools their commitment to each of the school involved will be less than if all their children attended the same school.
15. The objector points out that the individual director who expressed these comments has a vested interest in the change being made as it will benefit the admission of his child. The minutes of the board meeting where the decision was taken show clearly that this matter was recognised and the individual concerned declared a personal interest and took no part in the vote.
16. The objector comments that following the decision she was not informed that it had been made even though the school had her contact details. The school responded to this comment by explaining that it had made clear to all that the decision would be placed upon the school website and that it understood that the objector was fully aware of this because she had confirmed in an email that she would check for the result on the school website. Nonetheless, given the small number of responses and irrespective of any other advice, it could have been a simple courtesy for the school to have communicated personally with the small number of respondents who were not going to receive a parental letter via school.

17. The main part of the objection concerns the change in the oversubscription priorities to give children with a sibling in the school priority over children with no sibling even if the family lives outside the catchment area.
18. Paragraph 1.11 of the Code lists the use of siblings as an acceptable oversubscription criterion and states that “admission authorities **must** state clearly in their arrangements what they mean by ‘sibling’.....”. The school has met this requirement in its arrangements.
19. I have considered the impact of this change at the school. The 23 schools in the area participate in the Abingdon Partnership and with the exception of the faith schools who use faith-based oversubscription criteria and one newly established school that uses distance, the schools use a common set of oversubscription criteria that prioritise catchment area pupils over out of catchment area pupils and within these two categories prioritise siblings over those without siblings in the schools.
20. Most of the schools in the area admitted up to their published admission limits in 2012 and received more applications than they had places. This can be seen from the admission statistics in the council’s coordinated admissions document. This pattern of admissions has been repeated in 2013. Of the 23 schools in the partnership area, 12 admitted all of those who gave the school as their first preference and 11 were unable to. Three of these schools were unable to admit all the pupils from their catchment areas. Rush Common School, Thomas Reade School and Long Furlong School were unable to admit one, 15 and two in catchment applicants respectively.
21. The school has supplied the council’s pupil number forecasts for the area and these show that the pupil number cohorts peak in 2013 at 684 pupils, reduce to 632 for 2014, reduce to 602 in 2015 and then continue to reduce slowly through to 2019.
22. Paragraph 1.14 of the Code points out that “catchment areas do not prevent parents who live outside a catchment area from expressing a preference for the school.” In the current oversubscription criteria, children living within the catchment area receive priority and if there are insufficient places to admit all the catchment area children then distance from the school is used to determine who receives places. It is only in the last four years that the number of in catchment applicants has exceeded the available places in the schools and the school is forecasting that this situation will reduce in future years if the pupil number cohorts reduce again as forecast.
23. The school has decided to give priority to children who do not live in the catchment area but who do have a sibling in the school. The school explains that there are 412 pupils on roll at present of whom 135 live out of catchment and of these 15 are siblings. The number of out of catchment area children is a legacy of the school’s position up until four years ago which the school states was the last time that an out of

catchment area child was admitted to the school. This was when there were enough available places across Abingdon for parents to have a wide choice of where to send their child regardless of the designated catchment areas.

24. The school comments that in considering the change to the admissions policy the Trust believed that the school would remain popular and as such it would act in the interests of the school community by helping to keep siblings together. It was also believed that over time the siblings issue would right itself due to changes in the community, a reduced birth rate and the relative popularity of other schools. The school predicts that over the next five years the change to the admissions policy could affect twelve out of catchment area families whose older siblings are currently in Key stage 2.
25. In an earlier response about the consultation made to the school by the council, it was observed that if the changes had been made for 2012 then four families would have benefited from the change in the arrangements. The siblings who were not allocated places live 0.546, 0.797, 0.820 and 0.894 miles from the school. The four in catchment area children who would not have been allocated a place live at 0.664, 0.688, 0.688 and 0.689 miles from Rush Common School. These four in catchment children would have been considered for their second and third preference schools under the distance criterion for each school, which is the lowest over subscription criterion. The younger siblings of these out of catchment area families are resident in another school's catchment area and will have received a priority of admission in their local school as a catchment area child.
26. Paragraph 14 of the Code states 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. Parents should be able to look at a set of arrangements for that particular school and understand easily how places for that school will be allocated" In considering the change made to the school's oversubscription arrangements, the question is whether the criteria are "fair, clear and objective"?
27. The school argues that it wishes to ensure that families can have all their school age siblings in the school to allow maximum parental engagement with the school. For the small number of families who live out of the catchment area this is undoubtedly a measure that they would support. Looking at the decision from the point of view of a parent who lives in the school's catchment area and who will be seeking a place for their eldest child in 2014 this decision appears less "fair" for the reason that their child will only have a high priority in the oversubscription criteria of Rush Common School whilst a child of an out of catchment family with a sibling in the school will have a high priority in the oversubscription criteria of both Rush Common School and their local catchment area school and can exercise some choice about which to apply for. The parent living in the catchment area has been unable to exercise any choice in this matter and for this reason

the catchment area parent could argue that the arrangements are not “fair”.

28. The school points out that the Code provides a sample set of oversubscription criteria that prioritise “children with a sibling attending school at the time of application” over “other children by distance from the school” and suggests that this is the same situation that they are establishing by the change made. However, the sample arrangements are just that and are divorced from any local context. As the adjudicator in this case I must take into account the circumstances of this school and the fact that it has as part of its arrangements determined its catchment area. The Abingdon School Partnership has a system of schools that have designated catchment areas which work together and the school is a part of this system.
29. The difficulty here is the issue of how “clear” the concept of the catchment area is for parents and the school. The notion of a catchment area gives an implicit suggestion of a priority for admission by virtue of living in a particular area. The school argues that residence in the catchment area does not guarantee admission and that if oversubscription criteria have to be applied then distance from the school will be used. However, this is not the same as an oversubscription criterion that simply allocates priority in rank order of distance from the school without reference to a catchment area.
30. In its response to the objection the council commented “that the likely impact of the change is that a number of children who live in the designated/catchment area of Rush Common School will be unable to obtain a place. Anyone displaced in this way would be unlikely to obtain a place in the next nearest school and may have to be given a place some distance from home. Therefore the new admission arrangements are likely to increase the movement of children across Abingdon.” The school has responded by saying that it predicts that the situation will ease in 2014 as a result of a smaller pupil cohort.
31. The school points out that paragraph 1.10 of the Code states that “This Code does not give a definitive list of acceptable oversubscription criteria. It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances.” The Code does not state that admission authorities must use catchment areas, but the school has confirmed that catchment areas are the norm within Abingdon, with parents having the opportunity to request three schools in priority order. In recognition of these arrangements across the Abingdon Partnership schools, Rush Common Trust has not sought to make any changes to the issue of catchment areas given the local circumstances but it clearly states its view that “it must be noted that living within a catchment area does not guarantee a place at a particular school *per se*”.
32. The issue then is about the interaction of the sibling criterion change with the established pattern of a catchment area. There is nothing unlawful about the introduction of the sibling criterion if it is viewed in

isolation. However, the priority for out of catchment siblings sits uncomfortably alongside the school's criterion for a designated (catchment) area that by its name provides some form of implicit prioritisation to those who live within it.

33. In its correspondence the school has clarified its understanding that the designated (catchment) area does not guarantee a place. Where all in catchment area pupils are admitted in any given year then there is no difficulty. Where there are insufficient places for all catchment area pupils and the distance oversubscription criterion has to be applied, the arrangements would not be considered to be unfair. If, following the change that has been made to the arrangements, there are insufficient places available at the school in 2014 to give priority to both siblings and catchment area children then the school is creating a situation that could be judged to be unfair and it needs to consider how to resolve the matter.

Conclusion

34. I have looked carefully at the way that this consultation was carried out by the school. The objector makes some helpful suggestions about how to increase the effectiveness of the consultation by finding more ways to communicate with parents whose children are not yet at the school, but I am satisfied that the school complied with its statutory duty.
35. The objector makes some comments about the way that the decision making was carried out and the fact that one of the directors had a personal interest in the matter. The school has provided explanations and responses to these comments and I am satisfied that the consultation carried out complied with the requirements of the Code and I do not uphold this part of the objection.
36. The change made to the oversubscription criterion has been made following a proper consultation and discussion by the admissions authority. The change does not contravene the Code in respect of the specific provisions within the Code for siblings and catchment areas (paragraphs 1.11 and 1.14).
37. However, I consider that the interaction of the sibling criterion change within the established pattern of a catchment area does contravene the Code in respect of paragraph 14 and that a small number of catchment area families are at risk of being treated "unfairly" if they are displaced by any out of catchment area children who have priority of admission in their home catchment area school as well as at Rush Common School by virtue of their older sibling being there. If the older sibling was admitted to Rush Common School as an out of catchment area child when places were available, the parents will have been aware of the potential risk of not gaining admission for younger siblings. If the child was admitted as a catchment area child and the family subsequently moved out of the catchment area, parents will have been aware of the potential consequences of this action in terms of losing priority for

admission to the school. While the schools in the area work to catchment areas as a means of prioritising places then for the catchment area to have any substance it must be the case that parents have a degree of confidence that by living in a particular area their child has some priority for a place. In consequence I uphold the part of the objection concerning the addition of the new criterion for 2014.

Determination

38. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for Rush Common Primary School determined by the Board of Directors for Rush Common Academy Trust.
39. 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: 21 June 2013

Signed:

Schools Adjudicator: David Lennard Jones