

DETERMINATION

Case reference: ADA/002433

Objector: Northamptonshire County Council

Admission Authority: The Proprietor of Headlands Primary School, Northampton.

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 Proprietor of Headlands Primary School.

I have also considered the arrangements in accordance with section 88I(5). I determine that the published arrangements do not 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 Schools Standards and Framework Act 1998, (the Act); an objection has been referred to the Adjudicator by the school admission manager of Northamptonshire County Council on behalf of the council, the objector, about the admission arrangements (the arrangements) for Headlands Primary School (the school), an academy primary school for children age 3-11 years for September 2014. The objection is to the oversubscription criteria which give as the third criterion priority for reception places in the reception year for children on roll at Headlands Primary School Nursery Unit at the time of application.

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 school, on that basis. 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 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 letter of objection dated 3 May 2013;
- b. the school's response to the objection made through their solicitors 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 additional note concerning admissions in 2014;
- d. additional information from the LA concerning the current position for admissions to Reception classes at the school for September 2013, the process of allocating children under the over subscription criteria and the outcomes of that allocation;
- e. maps of the area identifying relevant schools in the Northampton area and the points on the map of where children live who are being admitted to reception in September 2013;
- f. confirmation of when consultation on the arrangements last took place during the spring of 2009;
- g. copies of the minutes of the meeting of 12 November 2012 at which the proprietor of the school, acting through the governing body, determined the arrangements for September 2014;
- h. a copy of the arrangements determined by the proprietor on 12 November 2012; and
- i. a letter from solicitors acting on behalf of the school's governing body received on 21 May 2013.

4. I have also considered the information I received during a meeting held at the school attended by the headteacher and representatives from the solicitors representing the school on 11 July 2013. The objector was invited, but was unable to attend.

The Objection

5. The school's arrangements for September 2014 list as point 3 of the oversubscription criteria; 'Children who are on roll at Headlands Primary School Nursery Unit at the time of application'.

6. The LA has objected to the inclusion of the named nursery unit as part of the over subscription criteria because it considers this is not compliant with the Code. Specifically it cites paragraphs 1.8 and 1.9 of the Code. The LA did not specify in the objection the specific parts of the paragraphs on which they rely as the basis for its objections. My interpretation of the Code is that the relevant areas of the paragraphs are, from 1.8 'that oversubscription criteria **must** be reasonable, clear, objective, procedurally fair and comply with all relevant legislation including equalities legislation' and from 1.9 conditions which must not form part of the arrangements including giving priority to children on the basis of any practical or financial support parent may give to the school. These were also the areas identified as relevant by the solicitors acting on behalf of the school.

7. The LA contends that giving nursery attendees priority within the oversubscription criteria may breach the Code. The LA reports that generally schools are not fully aware of the impact of linking nursery provision to admission arrangements.

8. Solicitors acting on behalf of the school suggested that the objection was not sufficiently clear and stated that as it is not a breach of the Code for a school to gain a relative advantage from a lawful oversubscription criterion; the adjudicator might consider that the objection does not fall within her jurisdiction. Section 88H of the Act (subsection 1A) applies where admission arrangements for an academy have been determined by the proprietor of an academy under the academy arrangements. In subsection 2 it goes on to say that where a body or person wishes to make an objection about the admission arrangements that that body or person may refer to the adjudicator. Subsection 4 requires the adjudicator to decide whether and (if so) to what extent the objection should be upheld. I conclude that I must consider the objection.

Background

9. Headlands Primary School is an average sized primary school catering for 3 to 11 year olds. The nursery area is an integrated part of the early years foundation stage provision. The school is inspected as a 3 -11 provider. The school's published admission number (PAN) for entry to the reception classes is 60 children divided equally across two classes and the nursery unit has places for 56 children. The published admission arrangements for the nursery state that priority is given on a first come first served basis of when the child has been registered for admission. Parents are encouraged to register their child as soon as possible and at the earliest immediately after they have registered the birth of the child. In addition there is a large private nursery attached to the school, The Acorn Nursery. This caters for children from birth to 5 years. The headteacher is a member of the management team of the Acorn Nursery. This nursery is inspected separately and does not form part of this determination.

10. The school's arrangements for entry to reception classes remained largely unchanged between when they were first published in 2004 and 2008. The Code published in 2008 was discussed by the governing body and they agreed that as the terms set in that Code would allow the inclusion of an

oversubscription criterion which gave priority to children attending the nursery class this would be included in the school's admission arrangements. A consultation process was undertaken and no objections were raised to the proposed change. The oversubscription criteria were subsequently published.

11. The school has made only minor amendments to these arrangements for entry to the school since 2009 and the published arrangements for September 2014, which are the subject of this determination, remain the same.

12. The school became part of a multi-academy on 1 November 2012. The school's governing body met on 12 November 2012 and considered the admission arrangements for September 2014. As the governing body decided not to make alterations to the admission arrangements from previous years no consultation process was put in place. This is compliant with the requirements of the Code that came into force on 1 February 2012 which says at paragraph 15 b) ...If no changes are made to admission arrangements, they must be consulted on at least every 7 years.

13. The admission arrangements for admission to Year R for September 2014 have been published with the following oversubscription criteria;

1. Those children in public care or previously in public care.
2. Those children who have an older brother or sister continuing at the school at the time of admission (for definition of brother or sister see below).
3. Children who are on roll at Headlands Primary School Nursery Unit at the time of application.
4. Those children who live closest to the school taking into account all entrances to the school (i.e. Cherry Close, Sheraton Close and the front pedestrian entrance on Bushland Road) using 'as the crow flies' measurements. The address given on the admission form should be your normal places of residence (the electoral role may be used to check addresses given).

When the admission number is reached within one of the applied criteria, the applicants will be prioritised by using as the crow flies measurements from the front door of the supplied address to the closest entrance to the school.

Consideration of Factors

14. I have considered the objection and sought to examine the factors relevant to the position of the nursery unit.

15. The Code used to support the admissions arrangements in 2008 contained specific reference to the inclusion of nursery provision. The current Code, which came into force on 1 February 2012 imposes mandatory requirements and includes guidelines setting out aims, objectives and other matters in relation to the discharge of functions relating to admission by admission authorities. In the 2012 Code there is no reference to nursery provision or any other non statutory provision or the linking of this other provision to admission arrangements to statutory school provision.

16. As the Code is silent on the issue of nursery provision and neither prohibits giving priority nor gives permission for nursery priority to be included as an oversubscription criterion I must test the criterion against the parts of the Code cited in the objection and the mandatory requirements of the Code. In particular, I shall consider the general requirement in paragraph 14 of the Code which states; '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 and understand easily how places for that school will be allocated'.

17. In the school's response to the objection made through their solicitors they state that the Code 'does not prohibit any form of nursery criterion being used' and this is the case. Neither, however, does it encourage or agree that such a criterion could be put in place. It is my judgement therefore that as the Code is silent on the issue of nursery provision it is necessary to make this determination based on the general requirements of the Code.

18. The oversubscription criteria refer to the 'children who are on roll at Headlands Primary School Nursery Unit' and these children are given priority over other children who do not attend the unit. The school suggests that as the nursery is an integrated part of the school the nursery pupils are already part of the school. The headteacher is passionate about the social and educational progress of the pupils from their admission to the nursery through to the end of key stage 2. He cites valid and professional arguments about the importance of progression and continuity for these children, many of whom live in disadvantaged circumstances, and the need for stability and structure in their lives. The headteacher provided examples of families who live in areas of deprivation, of dysfunctional families with addiction and violence issues and he further reported that more than a quarter of the children in the school use a first language which is not English. This is in line with the details of the school reported in the most recent Ofsted report of January 2010.

19. I have considered therefore if a nursery unit can be capable itself of meeting the legal definition of a school. The legal definition of a school for the purposes of education legislation can be found in section 4 of the Education Act 1996: it has to be an 'educational institution which is outside the further education sector and the higher education sector and is an institution for providing – (a) Primary education, (b) Secondary education, or (c) Both primary and secondary education'. Also an 'institution which provides only early years provision ... and is not a maintained nursery school, is not a school.' So the nursery unit is not itself a "school".

20. The nursery unit at the school does not provide education for children of statutory age and the provision is funded independently (see finance considerations below).

21. Schools must provide places for admission to the reception year and applications must be made through the LA's co-ordinated admissions

arrangements. In the LA's admission documentation it is clearly stated that applications for reception places must be made for all children including those who attend the nursery unit. The headteacher agreed at the meeting that this is the case.

22. It is therefore clear to me that the nursery unit caters for children who are not of statutory school age whereas the main school provides for statutory school age educational provision. Parents must make an application for a place for a child at a school for the year in which the child reaches compulsory school age and the school must have an admission number for the relevant year which is the reception year. For the purposes of this determination I conclude that the nursery cannot be treated as a part of the school for the purposes of admissions.

23. I have considered paragraph 1.9(e) of the Code which states that admission arrangements "**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 any religious authority".

24. For all children attending the nursery unit the funding for nursery places for 15 hours per week during term time is allocated from the LA on the basis of the number attending in a similar way to the age weighted pupil units which are allocated for the children of statutory school age.

25. In addition, parents of children in the Headlands nursery are able to apply for additional provision over the lunchtime period either at the end of the morning session or the beginning of the afternoon session at a cost which covers supervision. Many parents choose to pay for this supervision. Parents may also purchase afternoon or morning provision thereby providing children with full-day nursery sessions. Currently no parents pay for these extra sessions but there have been instances in the past and the offer for the provision is maintained and publicised to parents. When parents pay for this the fees are paid direct by the parent to the school.

26. I understand that the school wishes to fill its nursery to gain maximum funding and that the extra provision is to support families of the children. The school states that they offer the additional time in the nursery as a response to parental requests and the motivation is to serve their community. A financial statement provided by the school shows that the nursery has been subsidised by the school budget to varying degrees over the past three years. This statement was provided for the meeting as evidence of the importance of the nursery provision as considered by the school governing body.

27. I understand and accept the school's statement that it is motivated by the educational benefit it sees for children able to attend the nursery and progress to reception and that by offering additional support the school is responding to the needs of the community.

28. In my opinion the funding from the LA for the children in the nursery is comparable in its financial methodology to the funding allocated for statutory aged provision and I incline to the view that it does not therefore contravene paragraph 1.9(e) of the Code. Those parents who purchase additional time in

the nursery either for the lunchtime session or the half day sessions are contributing to the school budget and it could be argued that this amounts to “financial support” as stated in paragraph 1.9(e). I have considered other factors in this determination in relation to the fairness of the arrangements under paragraph 1.8 and have concluded that the arrangements are unfair for other reasons, and I therefore conclude that paragraph 1.9(e) is not a determinant factor in this case.

29. The school is oversubscribed and the most recent figures for entry to reception in September 2013 show that 61 children have been allocated places and this over allocation is due to an error identified by the admissions team in the LA (preference entered in wrong order). Seventy-four first preference applications were received for the 60 places and they were allocated as follows: no application was received from children with statements of educational need naming the school or children in public care or previously in public care. All 26 siblings and 18 children on roll at the nursery were allocated places. Of the 26 siblings, 16 had also attended the nursery. A further 30 applied and 17 of these were allocated a place based on the distance from school criteria. Of the 13 children who applied but were unsuccessful the nearest to the school lived 1.6 miles away from the nearest entrance. This is a very similar pattern to the outcome of the admission process for September 2012 published on the local authority’s website. Of the successful applicants 34 places were allocated to children who had attended the nursery and 27 had not done so. This suggests to me that a child’s chance of being allocated a place at the school is significantly enhanced by attending the nursery.

30. I have received information from the LA about the capacity of schools in the local area and on allocation day 2013 of the 22 schools in the area 12 were over subscribed and 10 had places. This is not the full picture for September 2013 as some allocations are still to be made and the appeals process has not yet been concluded.

31. The school contends through their solicitors that in order to establish fairness for all children key factors should be identified which should then be used to identify priority. They state that the first relevant factor is the critical benefit of educational continuity for nursery pupils wishing to join reception, the second factor they suggest is a fair level of access to local non-nursery pupils to ensure they have a real chance of being admitted into reception in their most local school. They describe the sibling criteria as a third and complicating factor.

32. At the meeting the headteacher explained the importance of continuity and progression for children and this educational objective is fully understood. The sibling criterion is not disputed and is not the subject of this determination.

33. The second factor identified by the school, that is the fairness of the arrangements for local non-nursery children, is the critical issue in this determination in line with paragraph 14 of the introduction to and, as cited by the objector, paragraph 1.8 of the Code.

34. Thirteen children were refused places for September 2013 and the school's solicitors suggested that there were school places in the area available to these unsuccessful children.

35. The school provided a map of where the children live who have been allocated places for September and who currently attend the nursery. Of these there are a number who live more than 1.6 miles away from the school and these children will have received priority over those who are more local to the school. Children whose applications are unsuccessful can be accommodated at local schools because of under capacity, but this does not necessarily render the arrangements fair to those families.

36. My conclusion is that the oversubscription criteria provide a clear advantage to those children attending the nursery over those children who may live closer to the school but who, for whatever reason, do not or are not able to attend the nursery.

37. Paragraph 14 of the Code states that "Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."

38. When considering the over subscription criteria a parent of a three or four year old living in the local community will see that they will be in the fourth priority category when oversubscription criteria are applied to their application, they will be behind looked after children, siblings and children already in the nursery. These parents may think they should or even must send their child to the nursery in order to have a realistic likelihood of obtaining a place at the school.

39. Attending a nursery is not obligatory and parents may choose other provision for their children. Parents may prefer to look after their children at home or have other arrangements for child care based on family and/or work commitments. In addition parents moving into the area with a child under five would be at a disadvantage even if they wished the child to attend the nursery as the arrangements for the school's nursery recommend very early registration for admission to the nursery.

40. Parents do not have to send their child to school either full or part-time until the term in which the child is five years old. This is their legal right and admission arrangements should not operate against them being able to make this choice at the appropriate time.

41. My view is that the arrangements are unfair to those local parents who are unable or who choose not to send their child to the nursery or who would like to but are not allocated a place and this is in breach of the Code.

42. I brought two additional areas of the admission arrangements to the attention of the headteacher: the definition of children in public care or previously in public care and the inclusion of a tiebreaker.

43. The definition of children in public care or previously in public care is provided in a later section of the admission arrangements and it would be

clearer for prospective applicants if the definition is stated in the oversubscription criteria. The same is true for the definition of siblings which is added below the other oversubscription criteria.

44. The Code requires admission authorities to include a tiebreaker so that in the event of two children living the exact same distance from the school there is a clear process for deciding who should be allocated a place. No tie breaker is currently included in the admission arrangements. This addition is needed to meet the requirement in paragraph 1.8 of the Code which states '...Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated'.

45. At the meeting the headteacher agreed to amend the two sections of the admission arrangements so that they comply fully with the Code.

Conclusion

46. I accept that continuity of education for children from 3 to 11 is desirable and that stability and ordered progression in their learning may be a factor in their academic and social progress. However, giving priority for nursery attendees advantages those children who have been registered for this provision from as early as soon after their birth. It consequently disadvantages those parents who decide not to, or are not able to use the school's nursery provision even though they may live nearer to the school. For this reason I consider this to be unfair and contrary to paragraph 14 and paragraph 1.8 of the Code.

47. I consider that the oversubscription criteria may place undue pressure on parents to take up nursery places in order to ensure a place in reception for their child. The Code is clear that admission authorities must not require parents to take up their school places until the term in which the child reaches compulsory school age and so I consider the arrangements unfair.

48. Admission arrangements for reception classes are regulated by statute, but the current arrangements for admission give an advantage to those children attending the nursery whose admission arrangements would not be lawful if used for admission to the reception year. I consider this to be unfair for parents whose children do not attend the nursery.

49. My conclusion therefore is that taking all these considerations together the admission arrangements which give priority for attending the nursery class are not compliant with the Code.

50. In addition there are other elements of the arrangements which do not conform to the Code as described above.

Determination

51. 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 Headlands Primary School.

52. I have also considered the arrangements in accordance with section 88I(5). I determine that the published arrangements do not fully conform to the requirements relating to admission arrangements.

53. 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: 2 August 2013

Signed:

Schools Adjudicator: Mrs Ann Talboys