

## **DETERMINATION**

**Case reference:** ADA/ 002204

**Objector:** An eligible parent

**Admission Authority:** Nottinghamshire County Council

**Date of decision:** 28 September 2011

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by Nottinghamshire County Council, for West Bridgford Infants School, a community school.**

### **The referral**

1. An eligible parent (“the objector”) has referred an objection to the Office of the Adjudicator about the admission arrangements (“the arrangements”) for West Bridgford Infant School (“the School”), a community school, on the grounds that they are unfair and therefore contravene a mandatory requirement of the Schools admissions Code.

### **Jurisdiction**

2. The arrangements were determined under section 88C of the School Standards and Framework Act 1998 (“the Act”) by Nottinghamshire County Council (“the Council”), which is the admission authority for the School. The eligible parent submitted the objection to these determined arrangements on 21 July 2011. I am satisfied that this objection has been properly referred in accordance with section 88H (2) of the Act.
3. I am satisfied that I have jurisdiction to consider the arrangements under the Act and that it falls within my jurisdiction.

### **Procedure**

4. In coming to my conclusions, I have had full regard to the relevant legislation and guidance.
5. The documents I have considered in reaching my decision include:
  - the objection from an eligible parent dated 21 July 2011 and subsequent correspondence;
  - the School’s response to the objection;

- the response from Nottinghamshire County Council and supporting documents:
  - A copy of the determined arrangements for Nottinghamshire County Council's Community and Voluntary Controlled primary, Infant and Junior Schools 2012/13;
  - Council booklet, "Admissions to schools, Guide for parents 2012-2013."
6. In addition to investigating the matters raised in the referral I have also considered whether I should use my powers under section 88J(2)(b) of the Act. I am not using my powers under the Act to make changes to arrangements.

### **The Objection**

7. An eligible parent has objected to the admission arrangements determined by the Council for West Bridgeford Infant School on the grounds that they are unfair and have not been determined with fairness in mind. The objector refers specifically to the priority afforded to siblings in the Council's oversubscription criteria for community schools and expresses the view that arrangements contravene the School Admissions Code ("the Code") which states that families **must** be at the heart of the admissions system.

### **Background**

8. The objector lives within the catchment area of Jesse Gray Primary School, a community primary school and applied for a place at that school in 2010/11. However as it was oversubscribed the applicant was offered a place at West Bridgeford Infant School, which in that year was able to offer places to 14 out-catchment children. The objector confirms that she has been happy with the School and now wishes her youngest child to attend with his sibling in 2012/13. She expresses concern that the oversubscription criteria as they stand, may give other children priority and that her application may again be unsuccessful and that her 2 young children will have to attend different schools.
9. Whilst the family do not live within the catchment area of the School, it is actually the nearest school to home, approximately 0.25 miles and the family live closer to the School than many other homes that are within its catchment. The objector is concerned that due to the increased popularity of the School, her youngest child, will not be afforded the priority which the objector contends a sibling ought to be entitled to according to the Code; and in her view the oversubscription criteria for voluntary and community schools do not follow the guidance in the Code to give due priority to siblings, in order to support families, and thus were not designed with fairness in mind.

10. For admissions in 2011/12 the School came under intense pressure with 283 applications, but with a published admission number (PAN) of 80, many applicants were disappointed. The School was not able to meet all demand from within catchment and therefore had to refuse 17 families. Among the many out-catchment applicants were 5 with siblings and all were refused, although they made successful appeals. This unexpectedly high level of oversubscription is a source of anxiety for parents.
11. Jesse Gray School, the catchment area school for the objector, also experienced a high level of oversubscription for 2011/12 and 20 families from within the catchment plus 6 out-catchment families with a sibling link were refused places. The Council has taken action to manage the pressure on places at these schools by increasing the admission number at Jesse Gray School by 30 extra places for one year only, through a local agreement between the Council and the School governing body. As a result, all applicants for Jesse Gray for 2011 have been allocated places and there is no waiting list.
12. The Council selected Jesse Gray School for expansion as its site could accommodate the extra provision required for a 'bulge' year group. After a review it concluded that it would not be possible to expand provision on the West Bridgford Infant School site as the Victorian site is too small to permit the addition of a mobile classroom.
13. The Council has advised that if there was a similar level of over-subscription for the School in 2012/13 and the objector expressed a preference for this out-catchment school, it is possible that no place would be offered and in that event parents would have the right of appeal to an independent appeal panel. However there can be no certainty in the outcome of such an appeal as the Code requires Appeal Panels to abide by Section 1 of the Act which limits the size of an infant class to 30 pupils with a single teacher and there are very limited circumstances, prescribed by regulations, in which children may be admitted as exceptions to the infant class size limit.
14. The Governing Body states that historically the School has not experienced any issues regarding the intake of siblings from out of area because in previous years the School had not filled to its PAN from within the catchment area and had therefore been able to relieve the pressure on other schools. However whereas many houses had in the past, traditionally housed students or provided accommodation for elderly people, families were now moving back into the area and for the first time the School had not been able to admit all in-catchment pupils. The School feels that the Council, having noted the problem which has occurred this year, has responded immediately and is investigating the issue in order to address it as soon as possible. School governors express sympathy for local families and would wish to admit all siblings but are aware that it is also preferable to be able to accommodate in-catchment families.

## Consideration of factors

15. The School's recently increased popularity has resulted in a larger number of parents indicating a preference for a place for their child at the School. This will potentially mean that more parents are disappointed and the School's admission arrangements will come under increased scrutiny. It is inevitably the case that when a school is over-subscribed the application of its over-subscription criteria will favour some applicants over others. The central issue is whether it does so fairly and the Code sets out a number of principles which provide a framework for such assessments.
16. The provisions in the Code fall into two categories, the first states that an admission authority "**must**" follow a certain course of action, which means it has a mandatory and statutory duty to do so and the second states that the admission authority "**should**" follow a certain action and is deemed to be "guidance", although there would have to be a clear rationale and reasons for not following that guidance. All admissions authorities must ensure that their determined arrangements comply with the mandatory provisions of the Code and in practice this means that they **must** consult widely on their proposed arrangements before 1 March in each determination year; and the consultation period **must** be for a minimum period of eight weeks. Arrangements **must** then be determined by 15 April and then published.
17. The Council consulted widely on its proposed arrangements between 1 December 2010 and 31 January 2011, determined its arrangements on 31 March 2011 and published them as required. In my view the Council has therefore complied fully with these mandatory aspects imposed by the Code.
18. For the purposes of this adjudication however, I need to be satisfied as to the general fairness of the arrangements and to compliance with relevant specific requirements and expectations of the Code. The Code requires that parents need to be able to understand whether or not they have a realistic chance of being offered a place for their child at a particular school and the Council has taken great care to provide full information to parents about the effect of the preferences they make when applying for a particular school.
19. If a school is oversubscribed the Council, as the admissions authority for community and voluntary controlled primary, infant and junior schools in its area, must consider all applications against its published oversubscription criteria in priority order. These state that after places have been allocated to pupils who have a statement of special educational needs which names the school, the following criteria will be applied:
  - *Children looked after by a local authority.*

- *Children, who live in the catchment area and who, at the time of admission, will have a brother or sister attending the school or linked junior/primary school.*
- *Other children who live in the catchment area.*
- *Children, who live outside the catchment area and who, at the time of admission, will have a brother or sister attending the school or the linked junior/primary school.*
- *Other children who live outside the catchment area.*

*Note: In the event of over-subscription within any criterion, preference will be given to children who live nearest to the school as the crow flies with distances measured from the entrance to the child's home to the principal entrance to the main administrative building of the school.*

20. All arrangements are bound to discriminate between children – that is inevitable when a school is oversubscribed and decisions have to be made as to which children should be offered places. The Code recognises the validity of catchment areas but does not permit admissions authorities to give parents an absolute guarantee of a place for all in-catchment children. However the objector contends that the drafting and application of the oversubscription criteria are unfair and cites paragraph 2.25 of the Code which states :

*“Giving priority to siblings particularly supports families with young children of primary school age who may not be able to travel independently. Families **must** be at the heart of the admissions system and the Government expects the admissions authorities for primary schools to take the needs of parents with young children into account in deciding which oversubscription criteria will be used. The admission authorities for primary schools **should** ensure in their oversubscription criteria that siblings.....can attend the same primary school, as long as they comply with the Education (Infant Class Sizes)(England) Regulations 1998.”*

21. The objector refers to paragraph 2.21 of the Code explaining that as both parents have work commitments it would cause significant disruption if their two children attended different schools.

*“Many parents will want their children to attend the same school and most admission authorities recognise this and give priority in admissions to siblings. Giving priority to younger brothers and sisters of children already at the school supports families and can reassure parents about the safety of children when walking to school. Older children can also offer support to their younger brothers and sisters while at the school.”*

22. The Code provides guidance to admission authorities on how to

achieve good practice when setting oversubscription criteria and proscribes a number of criteria on the basis of unfairness. However it does not dictate what those criteria must be, as local circumstances will differ. The Council's arrangements and oversubscription criteria do prioritise siblings but this priority is exercised in conjunction with the equally important priority accorded to residence within a catchment area. Feedback from parents during the consultation period indicates that they regard this criterion as equally important. In this case the arrangements include prioritisation of families within the School catchment, who otherwise might be disadvantaged by a sole reliance on a sibling connection as the paramount criterion.

23. The Council contends that it has clearly explained in its arrangements exactly how priority to younger siblings will be given and has complied with the Code by ensuring that its arrangements do not unfairly disadvantage other families. Determining the best use of a sibling priority within oversubscription criteria is more complex than might first appear. The Code certainly gives a strong steer towards enabling children from the same family to attend the same school but it stops short of making this a compulsory or mandatory requirement, allowing instead, admission authorities to consult with their communities.
24. The separate and lower priority for siblings who reside outside a school's catchment area, is a practical solution that enables it to keep all in-catchment area families with siblings together at the same school and to offer places to as many in-catchment families as possible. Thereafter any families who reside outside the catchment but who have siblings receive priority over other non catchment area applicants. Council guidance for parents ensures that parents are aware that living within a catchment area, attending a linked school or having a brother or sister attending a school does not *guarantee* that an application will be successful but rather that such factors may secure a higher priority within the oversubscription criteria.
25. The Council has already completed an Equality Impact Assessment in respect of the Admission Arrangements 2012/2013 and feels that by publishing clear over-subscription criteria and admission arrangements, it is ensuring that children are provided with equality of educational opportunity. The Council would maintain that its admissions processes and criteria afford a fair, reasonable and just method of resolving competing applications as a result of oversubscription, in a way that is as family-friendly as possible. For the reasons set out above I believe that the decision of the authority to adopt a lower level of priority for out-catchment siblings is appropriate. I do not believe its arrangements to be procedurally unfair or to contravene any mandatory requirements.
26. In the light of the issues raised by the objector and other parents the Council plans to undertake a further review of the impact of its arrangements, in order to inform future consultations with its communities. In this case and others that have come to the attention of the Council, the application of the current oversubscription

arrangements have reduced the priority for a number of siblings living outside a catchment area but they have significantly increased the likelihood that parents residing within a designated catchment area will gain admission to their local school and that siblings of in-catchment children are far more likely to be kept together.

27. The issue in this particular case relates to the fact that the objector was unsuccessful in gaining an in- catchment place for her first preference due to unexpected demand for places in 2010/11 and had to accept her second preference school. The Council has taken action and increased the number of places available this year. However, now that the first child is settled and happy in this (second preference) school it is quite natural that parents do not want to disturb her and want both children to be educated together.
28. However any change in policy to prioritize all siblings regardless of where they reside would need to acknowledge the impact on the likely success of in-catchment area families gaining admission to their designated local school particularly when several local schools are significantly oversubscribed. The Code states in paragraph 2.24 that in giving priority to siblings, admission authorities **must** ensure that their admission arrangements - as a whole - do not unfairly disadvantage other families. The Council will need to assess whether the disadvantage suffered by displaced in-catchment applicants would be greater than that experienced by out-catchment siblings. Nevertheless admission authorities must strive to do their best and hard choices need to be made between equally deserving cases.
29. Consultation and full consideration will enable the Council to assess which set of priorities has the support of the community and is therefore likely to be more widely accepted as the way to achieving arrangements that comply with the Code. Admission authorities are bound by the Code to ensure fair access to educational opportunity but this does not imply that all parents are guaranteed places in particular schools nor is the Council required to create circumstances whereby all groups of parents have an equivalent chance of having their expressed preference for a school place met.
30. The Code gives a very strong steer towards the desirable outcome of enabling siblings to attend the same school but it does not demand that any particular form of sibling criterion should be used. It also recognises the validity of catchment areas but forbids admission authorities from offering an absolute guarantee of a place for all in-catchment children. Ideally, as in the case of the School, governors and admission authorities might wish to admit all siblings and all in-catchment applicants but in certain particular circumstances, such as here with unexpectedly high levels of oversubscription in a local area difficult decisions have to be made between applicants who appear to be equally deserving.
31. I am not persuaded that there has been any breach of a requirement of

the School Admissions Code or any other requirement imposed by or under Part III of the Act; consequently I have decided not to make any changes to the admission arrangements

### **Conclusion**

32. Having considered whether the arrangements are unfair in the way prohibited by the Code and for the reasons given above and I have concluded that the arrangements made by the Council are consistent with the requirements of the Code and, in particular, meet all of its mandatory requirements.

### **Determination**

33. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by Nottinghamshire County Council, for West Bridgford Infants School, a community school.

Dated: 28 September 2011

Signed:

School Adjudicator: Carol Parsons