

DETERMINATION

Case reference:	ADA2736
Objector:	The head teacher and governing body of Oldfield Park Junior School
Admission Authority:	Bath and North East Somerset Council
Date of decision:	29 September 2014

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 Oldfield Park Junior School determined by the Bath and North East Somerset Council.

I have also considered the arrangements in accordance with section 88I(5). I determine that they 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 School Standards and Framework Act 1998 (the Act) an objection has been referred to the adjudicator by the governing body (the objector) of Oldfield Park Junior School (the school), in an email dated 28 June 2014 concerning the admission arrangements for September 2015 (the arrangements) for the school, determined by Bath and North East Somerset Council, the local authority (the LA). The objection is to the increased published admission number (PAN) for the school and the consultation and determination of the arrangements.

Jurisdiction

2. The arrangements were determined by the LA, which is the admission authority for the school. The objectors submitted the objection to these determined arrangements on 28 June 2014. The governing body of a community school is permitted as an exception to the prohibition in paragraph 3.3c) of the School Admissions Code (the Code) to object to an increase in the school's PAN. I am satisfied that the objection has been properly referred to me in accordance with section 88H of the Act

and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the Code.
4. The documents I have considered in reaching my decision include:
 - a. the objection, dated 28 June 2014, with supporting documents and subsequent correspondence;
 - b. the LA's response to the objection, dated 16 July 2014 and subsequent correspondence;
 - c. the LA's 2015/16 primary admissions criteria for community and voluntary controlled schools;
 - d. papers relating to the LA's consultation on proposed admission arrangements for 2015/16;
 - e. the LA's primary and secondary school organisation plan 2011 – 2015;
 - f. the LA's primary and secondary school organisation plan 2013 – 2017;
 - g. the LA's prospectus, 'A Primary School for your Child' for 2014/2015 and 2015/2016;
 - h. notes of the adjudicator's meeting with the parties to the objection, held at the school on 9 September 2014; and
 - i. the school's website.

The Objection

5. The objection is to the increase in PAN and conduct of the consultation carried out by the LA regarding the arrangements for 2015/16. The objector further contends that, in determining and publishing the arrangements, the LA failed to comply with the timescale required by the Code. The objection also draws attention to the LA's comments on transfers to the school from its paired infant school, which the objector believes to be non-compliant with the Code in respect of its requirements relating to feeder schools.

Other matter

6. In the course of considering the objection I reviewed the arrangements as a whole and noted that, as published in the LA's prospectus "*A primary school for your child*" there is no final tie-breaker, as required by paragraph 1.8 of the Code.

Background

7. The school is a community junior school for pupils aged 7-11, with about 236 pupils on roll. The proportion of pupils eligible for free school meals and for whom the school receives the pupil premium is below average; the proportions of children with different levels of support for special educational need are average. When inspected in June 2008, the school was judged satisfactory; in 2010, with the current head teacher newly in post, it was also judged satisfactory overall but with good capacity for sustained improvement, and the report commented that *"The school environment has been transformed."* The most recent inspection, in October 2012, judged the school to be good in all aspects and stated that *"The school has made great strides since its last inspection, when the head teacher was new in post; in this, it has been well supported by the local authority."*
8. The arrangements for 2015/16 were determined by the LA on 10 April 2014 providing a standard format for its community and voluntary controlled primary, infant and junior schools.
9. The PAN for admissions in 2014 was 60 and for 2015 is 75. In the admissions round for September 2013, 75 preferences were expressed for the school and 59 offers were made, a similar number of offers as in the previous two years (58 and 59 respectively) and for September 2014 there were 94 preferences with 60 places offered and 10 preferences refused, with the furthest offer at 0.616 miles from the school.
10. The arrangements for 2015/16 provide, as required, that children with a statement of special educational need in which the school is named will be admitted, where possible within the PAN for the school. Oversubscription criteria are then, in summary:
 - A. Looked after or previously looked after children
 - B. (i) Children who live within a 1.5 mile radius of the school and for whom there will be a sibling at the school on the admission date
(ii) Children who live outside a 1.5 mile radius of the school but for whom there will be a sibling at the school on the admission date
(iii) Children who live outside a 1.5 mile radius of the school but for whom it is their closest community or voluntary controlled school and for whom there will be a sibling at the school on the admission date
 - C. Children who live closest to the school as measured in a direct line

The three categories under criterion B are given equal consideration; the 'radius measurement' for this school is taken from a mid-point between this school and its paired infant school, which is explained clearly in the arrangements.
11. The LA established a 'bulge' class in September 2012 at Oldfield Park Infant School, the cohort of children for whom applications will be made

for entry to year 3 in September 2015.

Consideration of Factors

12. The reasons for the objection to the consultation process are as follows. The objection states that the LA did not meet the requirements of section 1 of the Code, notably paragraph 1.3, which states that *“For a community or voluntary controlled school, the local authority (as admission authority) **must** consult at least the governing body where it proposes either to increase or keep the same PAN.”* The objector also claimed that the LA failed to comply with paragraph 1.44d), which requires the LA, as the admission authority, to consult with the governing body regarding the proposed increase to the school’s PAN, and that the LA failed to comply with paragraph 1.47, which states that *“Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and **must** publish a copy of their determined arrangements on their website ... “.*
13. The objection states that, in coming to its decision to increase the school’s PAN, *“the Authority has undertaken minimal consultation with us, and those discussions that have taken place have been instigated by the school, rather than by the Authority.”* Furthermore, the objection states that although the Code requires arrangements to be determined by 15 April and then published, the arrangements with the revised PAN were not available on the LA’s website until the middle of June and that the school was not informed of the decision until 18 June after a direct request to the LA. It says *“We understand that the decision was to have been taken by 15 April, 2014. However it was not published on the Council’s website until the middle of June 2014. The school was only told of the decision on 18 June 2014 after chasing the Authority for details of what had happened.”*
14. In its response, the LA informed me that for the 2015/16 academic year there was no proposed change to the arrangements; although there was therefore no statutory duty on the LA to do so, a consultation was none the less held as this was felt to be good practice. In accordance with timescales set in the Code, this consultation ran from 16 December 2013 to 28 February 2014 and was made available to all interested parties. No comments were received, and so the arrangements were determined in cabinet, with no changes to the general procedures or oversubscription criteria, on 10 April of this year.
15. Prior to this consultation, the LA circulated a list of proposed PANs to all schools on 17 October 2013, asking for an initial response by 29 November. The suggestion from the LA was an increase to the school’s PAN from 60 to 90 places. A final list was sent to schools on 16 December, in which the proposed PAN remained set at 90 places. Prior to this period, officers from the School Capital Organisation Team had visited the school on 13 October 2011 to discuss the proposed increase to the PAN in the light of future provision for a ‘bulge’ class that had been established at the neighbouring infant school. During this time, when raising the PAN was under active consideration, the

School Organisation and School Asset managers made a visit to the school on 12 November 2013; the School Organisation manager attended, by invitation, a meeting of the school's governing body on 1 April 2014.

16. The school does not contest these details, but emphasises that it heard nothing from the LA about decisions or further proposals regarding the PAN between the 2011 meeting and the start of the 2013 academic year. At that time, it made a request to officers for evidence of the need for an increase in places at the school in September 2015, but still received no information until, early in 2014, it was sent a copy of the LA's proposed School Organisation Plan, which again gave a PAN of 90. The school wrote to the LA restating its previous concern over the proposal and saying *"As no further discussion took place, we assumed that this plan had now been dropped in accordance with the wishes of the school."* Following concern also expressed by other local head teachers, who expressed some anxieties about the impact on their schools of increased admission numbers at this school, a LA officer attended a meeting of the school's governing body on 1 April, as noted above.
17. The LA's position had changed somewhat, in that the officer present at this meeting reported that the PAN proposed was now 75 rather than 90; the school was advised that this was in response to the concerns raised by other local schools. The LA felt that there was sufficient space within the school for these additional children but made no commitment concerning financial support for them or regarding any building adaptations that might be needed.
18. The officer had previously replied in a letter to the school that *"it is a reasonable assumption for a parent to make that their year 2 infant child should be able to enter the paired junior school when they go into year 3"*, and minutes of the governing body meeting on 1 April record the same officer as repeating this justification for wishing the school to accommodate at least some of the 'bulge' class from Oldfield Park Infant School. In its written response to the objection another LA officer commented that *"parents would reasonably expect to be able to transfer to the Junior School in September 2015."*
19. Oldfield Park Infant School is not named as a feeder school in the arrangements for Oldfield Park Junior School. Moreover, paragraph 1.9 sub sections a), b) and c) in the Code state that *"admission authorities ... **must not** ... b) take into account any previous schools attended, unless it is a named feeder school; ..."*. The objector contends, however, that the LA is in implicit breach of this requirement by linking the need to increase the school's PAN to the provision of additional places for children in a 'bulge' class at Oldfield Park Infant School. I note that the arrangements state categorically *"Parents of children attending an Infant School must make an application for their child to be considered for a Year 3 place. There is no automatic transfer into any school."* Despite the comments made by the LA in meetings and in response to the objection, the arrangements

themselves are compliant with the Code in this matter and do not make any formal link between the school and its paired infant school with regard to admission arrangements.

20. In response to questions I asked about the availability of places in the area and the actual number of children who will transfer into year 3 in September 2015, I was told that there are currently 71 children in year 2 at Oldfield Park Infant School. The school informed me that in the previous two years 55 out of 60 and 46 out of 60 children were admitted from the infant school, and that it is an expectation that the whole cohort would not normally apply for a place at the school. In these past two years, eight and 12 children respectively have been admitted from other schools. The school admitted 3 children over PAN in the current school year as a result of appeals. It is clear that although not all children from Oldfield Infant School transfer to the school, the large majority do and so do children from other schools.
21. The school has improved in recent years and I consider it likely that the number of applications to it will increase. However, on the basis of information given by LA officers, there appear to be sufficient places in year 3 in the Bath area to accommodate children transferring from infant schools and in stating this I draw also on the evidence of the concern expressed by other local schools about the effect on their numbers of increasing this school's PAN. This concern clearly indicates other schools' willingness, and ability, to accommodate additional children. The LA acknowledged to me that there will be sufficient places in the Bath city area as a whole for children entering year 3 in September 2015, although these are not necessarily in the schools where it anticipates there will be the most demand nor that are geographically the most convenient for applicants. Nevertheless, these places are available and I believe earlier and longer consultation about how these places might be used most effectively, rather than simply opting to create an additional class at the school, might have been fruitful.
22. The school building is listed, and presents considerable challenges if any expansion were to be considered. If the changes were required only in the short term, while one additional group of children passes through the school, the value for money aspect of infrastructure work at the school would have to be questioned. There is a willingness to accept additional children in other local schools. This may mean that parental preferences are not met as completely as in previous years, and it may also mean that some schools would need to admit a small number of children above PAN; nonetheless, it does seem a solution of that nature might have been possible with earlier and more focused communication between the LA and the schools concerned.
23. Having considered the points put to me, I cannot agree with the objection to the consultation process regarding the arrangements, as this clearly met all the requirements of the Code in respect of timescales and publication. The specific aspect of consultations about the PAN is less clear; while accepting that the LA showed some

flexibility in adjusting down the level of the proposed increase, the school does seem to have to have worked harder than seems reasonable to obtain up to date information from the LA. The LA has not helped its case by on the one hand stating – correctly – in its arrangements that attendance at one school does not guarantee automatic transfer to any other, but then claiming the need to bow to (anticipated) parental pressure to be able to do just that in the case of the Oldfield Park infant and junior schools. Nevertheless, the level of transfer between the two schools is such that in considering the number of places needed for 2015 it is reasonable to conclude that additional places should be made available at the school.

24. Evidence shows that the school has improved provision and outcomes for its pupils significantly in recent years and I fully understand its concern that sustaining and furthering this progress should not be compromised by what it sees as a change in the arrangements that is both ill-considered and unnecessary. For its part, the LA is rightly concerned to meet its statutory duties regarding the provision of school places in this area for children moving into year 3 and to do this in what it believes to be the most effective and efficient manner, which would include expanding provision at a successful and improving school. While agreeing that it will present a challenge to the school if it is required to accommodate additional children and to find an additional teaching space, this is a management issue for resolution between the school and the LA. Paragraph 1.3 of the Code gives a community school the right to object to an increase in its PAN, but also says, *“There is a strong presumption in favour of an increase to the PAN to which the Schools Adjudicator **must** have regard when considering such an objection.”* I have considered the school’s and the LA’s views carefully and conclude that I should not uphold the objection to the PAN of 75 for admissions in 2015.
25. I agree with the school that the communication of aspects of the LA’s consultation and decision-making might have been better. However, the consultation process met the requirements of paragraphs 1.3 and 1.44 of the Code and, whatever views the LA may have expressed to the governing body of the school and in its written response to the objection, its arrangements make it clear that parents cannot expect necessarily to be allocated a place at a junior school if their child has attended the paired infant school. The determined arrangements do not contravene paragraph 1.9b) of the Code and so I do not uphold those aspects of the objection that relate to the consultation process or to comments relating to admissions from the paired infant school.
26. During my meeting with the parties to the objection, it was clear to me that the school and the LA are in agreement in wanting the best outcomes for children in the area when year 3 places are allocated for September 2015. At the meeting, the school undertook to make the best provision possible for its pupils, whatever the outcome of this determination. It is unfortunate that perceived and sometimes, in my view, actual failures in communication have resulted in decisions being delayed to the point where it may prove extremely difficult and costly to

have in place whatever infrastructure changes would be needed to accommodate a one-year 'bulge' of children at the school.

27. The second aspect of the objection to the determination of the arrangements is stated as follows: *"We understand that the decision was to have been taken by 15 April, 2014. However it was not published on the Council's website until the middle of June 2014. The school was only told of the decision on 18 June 2014 after chasing the Authority for details of what had happened."* The LA has not provided me with any evidence to challenge this claim that the arrangements for 2015/16, despite having been determined on 10 April, were not published on its website, or communicated to the school, for a period of some eleven weeks.

28. I determine, therefore, that the LA failed to meet the requirement of paragraph 1.47 of the Code in that it did not publish its arrangements as soon as they had been determined.

29. For the reasons explained above, I partially uphold the objection.

Other matter

30. In the LA's prospectus *"A primary school for your child"* the oversubscription criteria contain no final tie-breaker, as required by paragraph 1.8 of the Code, where two applicants for a final school place live equidistantly from the school. Paragraph 1.8 states that *"Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated."* While the arrangements acknowledge that admission numbers will be breached to allow places to be allocated where there are children from multiple births living at the same address, the situation of two or more children competing for one place and residing at different addresses that are equidistant from the school is not envisaged. A suitable tie-breaker to resolve such a situation needs to be introduced as quickly as possible

Conclusion

31. The objection draws attention to what are perceived as shortcomings in the consultation process to increase the school's PAN, the failure of the LA to publish its determined arrangements in accordance with the timetable laid down by the Code, and the assumption by the LA that parents of children in a neighbouring infant school should necessarily expect to be allocated a place at the school when their children transfer to year 3.

32. I found that the consultation on the arrangements had been properly conducted but some evidence suggested a lack of urgency on the part of the LA in maintaining an open dialogue with the school concerning the specific matter of its PAN. Whatever may have been said or written by LA officers concerning transfer between the infant and junior

schools, the arrangements themselves are compliant with the Code. I therefore do not uphold these aspects of the objection.

33. I have considered the reason for the increased PAN and the school's concerns. I have also taken into account the strong presumption in favour of an increase in a PAN. Having considered all the information available to me I do not uphold the objection to the PAN of 75 for 2015.
34. It is clear to me that, although the arrangements were determined on 10 April, the LA did not publish them on its website until mid June. This does not comply with the requirements of paragraph 1.47 in the Code and so I uphold this aspect of the objection.
35. In considering the arrangements as a whole, I found that they do not include an effective tie-breaker. It is for this reason that I conclude that the arrangements are not compliant with the Code and must be revised as soon as possible.

Determination

36. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for Oldfield Park Junior School determined by the Bath and North East Somerset Council.
37. I have also considered the arrangements in accordance with section 88I(5). I determine that they do not conform with the requirements relating to admission arrangements.
38. 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: 29 September 2014

Signed:

Schools Adjudicator: Andrew Bennett