

## **DETERMINATION**

**Case reference:** ADA/002448

**Objector:** Somerset County Council

**Admission Authority:** The proprietor of the Academy Trust for Avishayes Primary School

**Date of decision:** 29 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 Avishayes Primary School.**

**By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Adjudicator by Somerset County Council (the council), the objector, about the admission arrangements (the arrangements) for Avishayes Primary School (the school), a 3-11 academy primary school, for September 2014. The objection is to criterion 5 of the school's oversubscription criteria. This criterion gives priority to children attending the early years centre of the school.

### **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 Academy school, on that basis. The objector submitted the objection to these determined arrangements on 18 June 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 form of objection dated 18 June 2013;
  - b. the school's response to the objection and supporting documents;
  - c. the council's composite prospectus for parents seeking admission to schools in the area in September 2013;
  - e. confirmation of when consultation on the arrangements last took place;
  - f. copies of the minutes of the meeting at which the proprietor of the school determined the arrangements;
  - g. a copy of the determined arrangements; and
  - h. a copy of the school's Ofsted inspection report of May 2013.

## The Objection

5. The council has objected to the school prioritising for admission to the reception class children who attend an early years setting. It says that this contravenes section 1.9(e) and 1.9(l) of the Code. Paragraph 1.9(e) says that schools " **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." Paragraph 1.9(l) says that schools must not name fee paying independent schools as feeder schools.
6. The school's arrangements prioritise children with statements of special educational need that name the school, and then allocate places according to the following oversubscription criteria:
  1. Looked After Children – Children who are in the care of a Local Authority or have previously been and are now formally adopted
  2. Children without a statement of Special Educational Needs, identified with a sensory, physical or medical disability (High Needs Pupils), where a multi-agency professional team has identified the schools as the nearest accessible school (see important note
  3. Pupils who, at the closing date for applications will have a sibling attending in Reception to Year 5. \*\*
  4. Pupils who, at the closing date for applications, live within the

catchment area or can prove they will be living in the catchment area by the time of admission.

5. Pupils attending the Early Years Centre of the school at the closing date for applications.

6. Pupils who live outside the catchment area.

## **Background**

7. The school's published admission number (PAN) is 30. There are 278 children on the roll of the school. The nursery has provision for children aged 2-4. There are 52 part time places. The term after they are three, children are entitled to the 15 hours early years entitlement free provision and they can book additional sessions.
8. When the objection was brought to the attention of the school, the governing body met on 2 July 2013 and agreed unanimously to remove the criterion about children attending the early years centre from the over-subscription criteria.
9. The revised arrangements will read as follows;
  1. Looked After Children – Children who are in the care of a Local Authority or have previously been and are now formally adopted.
  2. Children without a statement of Special Educational Needs, identified with a sensory, physical or medical disability (High Needs Pupils), where a multi-agency professional team has identified the schools as the nearest accessible school (see important note 1).
  - 3, Pupils who, at the closing date for applications will have a sibling attending in Reception to Year 5. \*\*
  4. Pupils who, at the closing date for applications, live within the catchment area or can prove they will be living in the catchment area by the time of admission.
  5. Pupils who live outside the catchment area.
10. This objection was referred to me on June 18 2013. The school has stated that the inclusion of the criterion in its arrangements was an oversight and it has agreed to remove it. Nonetheless, under section 88H(4) of the Act I am still required to make a decision on the objection.

## Consideration of Factors

11. The previous Code was specific in permitting primary schools to give priority to children who attend their nursery classes alongside a requirement that priority must not disadvantage other local families. The current Code that came into force in February 2012 is silent on this matter.
12. I have considered the reasons given by the council for its objection. The academy funding agreement covers the early years centre and the school. It is clear that the early years centre comes under the auspices of the academy trust. It was inspected as part of the Ofsted school inspection of May 2013 and the inspection report classifies it as an early years centre. Since the early years centre is not a school in accordance with the legal definition of a school it cannot be a fee-paying independent school, I do not uphold the objection under paragraph 1.9(l).
13. The school's website offers a separate prospectus for the early years centre. This covers the general arrangements, the ethos and the activities of the centre. The centre admits children from the age of two for "a supportive combination of care and early education." It is said to provide "a seamless transition to starting school." It is fee paying and has its own admission arrangements. According to the prospectus the sessions are: morning from 9.00 -11.30, (£8.75) lunch 11.30 -12.45 (£4.38) and afternoon 12.45 – 3.15 (£8.75). Children aged 3 upwards are able to use their entitlement funding at the centre. Although closely linked to the school, it could be considered to be a separate organisation. For this reason, I understand the council's view that parents paying for provision at the early years centre are giving financial support to "an associated organisation". On the basis of the information that I have, I have not formed a definitive view on whether the school would contravene paragraph 1.9(e) if it included priority for the reception year for children attending the early years centre. As I have concluded that this criterion would contravene the Code for other reasons, my views on paragraph 1.9(e) are not the basis of my decision on this case.
14. I have considered the arrangements under the Code's general requirement for fairness set out in paragraph 14 of the introduction.
15. The school currently has 52 children on roll in the nursery, which equates to 26 in the morning and 26 in the afternoon. It is full and there is a waiting list. Admission is on a first come first served basis from the age of two and there is no mention on the website of a nursery appeals system. These arrangements are not regulated by the Code. They would however be unlawful if adopted as admission arrangements for admission to the reception year of the school.

16. The school's PAN is 30. Not all of the children in the nursery are of an age to transfer to reception. The figures however are clear. If the nursery preference criterion were to be used, there is a very high probability of the school filling with children under criteria 1 to 5. This would mean that there were no places left for non-siblings living outside the catchment.
17. Attending the nursery may not be possible for all families in the catchment area, or they may choose not to use the nursery, or they may wish to but be unable to have a place. The inclusion of a nursery priority criterion would result in children attending the nursery gaining priority places on the basis of admission arrangements which would not be lawful for a school. Some children may also have gained a place in the nursery by their parents paying for that provision. I do not consider this to be fair

### **Conclusion**

18. The school has stated that the inclusion of the nursery preference criterion in its arrangements was an oversight. However, although the school decided to amend its arrangements, it has not yet done so on its website. For the reasons set out above I do not uphold the objection under paragraphs 1.9(l). I have not formed a definitive view on the basis of 1.9(e) and so I neither uphold or do not uphold it on the basis of 1.9 (e). I uphold it under paragraph 14 of the introduction to the Code, which sets out the requirement for fairness.

### **Determination**

19. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body of Avishayes Primary School.
20. 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 August 2013

Signed:

Schools Adjudicator: Mrs Janet Mokades