

DETERMINATION

Case reference: ADA 2281-2288, 2295, 2309

Objector: A group of parents

Admission Authority: Surrey County Council

Date of decision: 3 August 2012

Determination

In accordance with section 88H (4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by Surrey County Council.

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 a number of parents, about the admission arrangements (the arrangements) for Wallace Fields Junior School (the School), a 7-11 community junior school, for September 2013. The objection is to the immediate introduction of tiered sibling priority. Tiered sibling priority gives siblings for whom the School is the nearest school, priority over siblings for whom the school is not the nearest to their home address. In this case, the statutory processes led to an agreement to introduce phased tiered sibling priority. This agreement was later overturned and replaced by the immediate introduction of tiered sibling priority. The objectors contend that this is perverse, unfair and breaches paragraph 1.8 of the School Admissions Code (the Code).

Jurisdiction

2. These arrangements were determined under section 88C of the Act by Surrey County Council (the Council)), which is the admission authority for the School. The objectors submitted their objections to these determined arrangements on 7 June 2012. Additional objections were received between 8 and 10 June 2012. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the Code).

The documents I have considered in reaching my decision include:

- a. the objectors' forms of objection dated 7,8,9 and 10 June;
 - b. the School's and the Council's response to the objection and supporting documents;
 - c. a draft of the Council's composite prospectus for parents seeking admission to schools in the area in September 2013;
 - d. a map of the area identifying relevant schools;
 - e. confirmation of when consultation on the arrangements last took place;
 - f. copies of the minutes of the meeting of the Council at which the arrangements were determined; and
 - g. a copy of the determined arrangements.
4. I have also taken account of information received during a meeting I convened on 25 July 2012 at Surrey Town Hall. I met with two Council officers, the chair of governors of the School and three of the objectors.

The Objection

5. The objectors state that, following the close of the statutory consultation and in breach of paragraph 17.1 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements (England) Regulations 2012 (the Regulations) which states that consultation on admission arrangements must be concluded by the first of March, the consultation was reopened and continued beyond the first of March 2012. The original outcome of the consultation was a decision to introduce tiered sibling priority on a phased basis. Following the reopening of the consultation, this decision was overturned and replaced by a decision to introduce tiered sibling priority immediately.
6. They contend that the introduction of immediate tiered sibling priority is unlawful, perverse, unfair and constitutes a breach of paragraph 1.8 of the Code, which stipulates that, "Oversubscription criteria **must** be reasonable, clear, objective and procedurally fair, and comply with all relevant legislation, including equalities legislation." In addition or alternatively they seek a ruling that tiered sibling priority should not be introduced at all.
7. They argue that the immediate introduction would disrupt the planned education of families who thought that they had made an informed

choice in applying to Wallace Fields Infant School on the understanding that, under the sibling priority, their children would progress to the School.

8. They raise a number of legal issues. These are not related to the Code and as such they do not fall within my jurisdiction.

Background

9. The Council's statutory consultation on admission arrangements for September 2013 included a proposal for the introduction of tiered sibling criteria for the School on either a phased basis or immediately for all applicants from September 2013. When tiered sibling criteria are in place, children living closer to a school (including siblings) will receive a higher priority for a place than other children (including siblings) for whom it is not the nearest school. This can result in families with children already at the school not gaining places for a younger child in that school if it is not their nearest school and if the school is oversubscribed with children for whom it is the nearest school.
10. Tiered sibling criteria are not used by most community and voluntary controlled schools in Surrey. The Council generally supports admission arrangements that enable families to gain admittance for their children into the same school. Following an informal review of the use of tiered sibling criteria, the Council has concluded that there are occasionally circumstances that warrant introducing them either for a fixed period of time or indefinitely, subject to periodic review. Circumstances that might warrant the introduction of tiered sibling criteria would include an increase in sibling numbers, for instance following the admission of an extra class.
11. The School is on an adjacent site to that of Wallace Fields Infant School which took an additional form of entry in 2009. A reverse sibling rule was introduced in 2010. This gives sibling priority to families with children in Wallace Fields Infant School who seek places at the School and vice versa.
12. The consultation regarding the introduction of tiered sibling criteria at the School showed significant support for introduction. But there was also considerable concern from parents at the impact this might have on families who might no longer be able to get their children into the same school, especially those who already had children at the School and who had made their preference decisions on the basis of the existing sibling criteria.
13. The February report to Cabinet following the consultation recommended the introduction of tiered sibling criteria for the School. However, it also noted the availability of alternative places in the local area for displaced non-sibling applicants as well as the potential disadvantage of the immediate introduction of tiered sibling criteria to families with children already at the School. It therefore recommended

the introduction of tiered sibling criteria on a phased basis.

14. This proposal was ratified by Cabinet on 28 February 2012. Following the decision by Cabinet and prior to determination by the full Council, some parents expressed dissatisfaction with the outcome of the consultation. The governing body made it clear that it had never supported a phased approach, but had been in favour of the immediate introduction of tiered sibling priority. On 19 March 2012 at the head teachers primary conference a further meeting was held. This was attended by the two Council officers responsible for admissions, the new lead member for children, the head teachers of the School and of Epsom and Ewell Grove Infants School and two county councillors. The new lead member decided that the original proposal should be varied and tiered sibling criteria should be recommended on an immediate basis. This was ratified by Cabinet on 20 March 2012. Since the statutory consultation had ended, the objectors were not aware of this sequence of events. They were therefore prevented from responding through their elected representatives or in any other way.
15. The Council has given a number of reasons for the decision to move to immediate rather than phased implementation. It says that a number of parents lobbied local members on the basis that the original decision did not reflect the views of parents. The head teacher of Ewell Grove Infant School together with local councillors apparently feared that failure to implement tiered sibling criteria on an immediate basis at the School would have a knock on effect on Ewell Grove Infant School. Council officers have also said that, although the chair of governors responded to the consultation supporting the immediate introduction of tiered sibling priority, the original decision had not noted and taken that fact into account.

Consideration of Factors

16. Amongst the factors I have considered are the levels of over subscription at the School, projected pupil numbers in the area, patterns of admission in the recent past, the availability of alternative provision, access to the School and impact on other schools.
17. Both Wallace Fields Infant School and the School are oversubscribed. They are both outstanding schools. In 2011 there were 195 applications for the School and in 2012 there were 183. The published admission number (PAN) is 68. For 2012 there are 127 applicants for whom it is their nearest school. So even if a tiered sibling criterion had been operant, it would not have been possible to offer a place to each child for whom it was the nearest school.
18. Following the introduction of the reverse sibling rule, sibling numbers increased dramatically between 2010 and 2011. But the 2012 numbers are comparable with those of 2011, with four sibling requests from families for whom the School is not their nearest. Most of these families live within one mile of the School.

19. Forecasts suggest a continuing rise in demand for school places in the area. This is expected to peak in 2020. The Council is planning to provide an additional form of entry to cope with the demand.
20. The Council argued in its 28 February 2012 report to Cabinet that it anticipated that there would be sufficient places available within the Epsom and Ewell area for each child in 2013 and that there was therefore no immediate need to amend the admission criteria for the School. It remains confident that it will have sufficient places though these are not guaranteed to be in outstanding schools. It also raised concerns about the potential impact of introducing tiered sibling criteria on an immediate basis, noting that; “ Parents who had made preferences for older children based on existing admission arrangements could unexpectedly face being unable to get a younger child in to the same school. This would then present that family with difficulties in getting their children to different schools at the start and end of the day and would remove the support within the school that an older child might offer to a sibling.”
21. Responses to the Council’s consultation raised concerns about traffic. Respondents in support of an immediate introduction of tiered sibling criteria believed that this would reduce the amount of traffic around the school. Others have argued that the opposite might equally well be the case. Parents who would have had all their children in the School and been able to walk there might have to accept places at other schools. They would then need to use their cars to get children to different schools.
22. The head teacher of Ewell Grove Infants School together with local councillors has argued post consultation for the immediate introduction of tiered sibling priority. This view was not put forward during the consultation. The head teacher has apparently said that she did not receive the consultation. She contends that parents will withdraw their children from Year 2 in Ewell Grove Infants School in order to take up places in nearby primary schools. They will do this rather than waiting until Year 3 fearing that they will not be offered places if they wait due to the proximity of displaced Wallace Fields children to those same primary schools.
23. Figures from the Council show that during the 2011/12 academic year, six children left Reception in Ewell Grove Infants School, one left Year 1 and nine left Year 2. The corresponding figures from Wallace Fields Infant School are one, four and three. It is clear that both schools are subject to mobility but the Year 2 figure for Ewell Grove departures is high.
24. The PAN of the School is 68. In 2010 it received 201 applications, in 2011, 195 and in 2012, 183. Most of the children admitted were siblings. There were 18 in 2010, 42 in 2011 and forty one in 2012. The number of children admitted under criterion 4 which is “children to whom it is the nearest school” was 48 in 2010, 26 in 2011 and twenty five in 2012. The distances concerned were 1.220 km in 2010, 0.870

km in 2011 and 0.687 km in 2012. The number of children from Ewell Grove Infant School allocated places at the School has decreased over the last three years. It was 10 in 2010, seven in 2011 and three in 2012.

25. Possible causes for the decrease cited by the Council are the number of pupils gaining places at the School under the sibling criterion and the choice of preferences for junior school places by Ewell Grove children. Whether tiered sibling priority is introduced immediately or on a phased basis, Ewell Grove Infant School children are not going to be guaranteed places under the nearness criterion as this year's figures show. So parents may continue to be anxious about obtaining primary places and act accordingly.
26. These figures demonstrate clearly that the combination of rising demand and sibling priority creates an ever smaller area of nearness to the school that guarantees entry. The introduction of tiered sibling priority in 2012 would not have made it possible to offer a place to every child for whom it was the nearest school. There are simply too many children for too few places.

Conclusion

27. The objectors contend that the arrangements breach paragraph 1.8 of the Code which stipulates that oversubscription criteria must be reasonable, clear, objective and procedurally fair. In addition or alternatively they seek a ruling that tiered sibling priority should not be introduced at all. I will deal first with the question of tiered sibling criteria. Oversubscription criteria serve to allocate a limited number of places to a greater number of applicants in situations such as that at the School. Inevitably they operate to the disadvantage of some applicants. No evidence has been cited to demonstrate that tiered sibling criteria are inherently unfair and I accept that there may be circumstances in which they make the arrangements fairer for more families.
28. In this case the Council has the difficult task of managing demand that has increased rapidly and allocating a limited number of places to a large number of applicants, some of whom will inevitably consider the criteria for doing so to be unfair. In its own report it noted the potential difficulties for families whose children would be split by the immediate introduction of tiered sibling priority. I judge that the retrospective impact of immediate introduction of tiered sibling priority makes it unfair to families who made earlier preferences based on the original criteria when it appears that the first conclusion of the Council was that there should be a phased introduction.
29. The process of consultation laid down by the Code plays an important role in ensuring the fairness of arrangements. It provides an opportunity for parents to make their views known alongside those of the professionals. While admissions authorities clearly have the right to amend the arrangements consulted on in the light of responses to

consultation, what happened in this case goes beyond such amendment and could be seen as reopening the consultation after its statutory conclusion. Moreover the additional consultation was not open and public and it did not include the objectors. As such, the consultation process did not fully meet the requirements of the Code.

Determination

In accordance with section 88H (4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by Surrey County Council.

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: 3 August 2012

Signed:

Schools Adjudicator: Mrs Janet Mokades