

## DETERMINATION

**Case reference:** ADA2554

**Objector:** Northamptonshire County Council

**Admission Authority:** The Governing Body of Woodnewton Primary School, Corby.

**Date of decision:** 13 September 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 governing body of Woodnewton Primary School .**

**By virtue of section 88K(2) of the Act 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 admissions manager on behalf of Northamptonshire County Council, the objector, about the admission arrangements (the arrangements) for Woodnewton Primary School (the school), an academy for pupils age 3 – 11 years, for September 2014. The objection is to the oversubscription criteria which give, as the fifth criterion, priority for places in Year R (YR) for children attending the school's nursery classes.

### **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 school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the proprietor, in this case, the governing body, which is the admission authority for the school, on that basis. The objector submitted the objection to these determined arrangements on 3 May 2013. Scrutiny of the documents provided by the school suggested the admission arrangements had not been determined following consultation, as required by the School Admissions Code (the Code). This was confirmed at the meeting I held at the school. The governing body subsequently met and determined the arrangements as required, albeit after the required

deadline. The objector acted in good faith believing the arrangements to be determined, and confirmed that they wished the objection to proceed after the arrangements were determined. While I am not obliged to consider objections received after 30 June, there is no prohibition on doing so and I consider there is good reason for me to consider this late objection.

3. Solicitors acting for the school suggested that the objection was not sufficiently clear and 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. Subsection (2) provides that where a body or person wishes to make an objection about the admission arrangements that that body or person may refer the objection to the adjudicator. Section 88H(4) requires the adjudicator to decide whether, and (if so) to what extent, the objection should be upheld.

4. 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**

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

6. The documents I have considered in reaching my decision include:

- a. the objector's form of objection dated 3 May 2013 and confirmed by email 6 August 2013;
- b. the school's and their legal representative's response to the objection 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;
- d. maps of the area;
- 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; and
- g. a copy of the determined arrangements.

7. I have also taken account of information received during a meeting I convened at the school on 16 July 2013 with representatives of the school and their solicitor.

## **The Objection**

8. The objection is to the inclusion of an oversubscription criterion giving priority for admission to YR of the school for having attended the nursery class. The objector refers to paragraphs 1.8 and 1.9 e) of the Code.

## **Background**

9. The school is a primary academy school in Corby. It was formed from the amalgamation of an infant and junior school in 2006 and became an academy in July 2012. The school's published admission number (PAN) is 120. There is a 65 place nursery on site (offering 114 part time places). The nursery has been included in the oversubscription criteria for several years.

10. The school can claim funds for 15 hours for each child aged three and four years from the term after the child's third birthday who attends the nursery; these sessions are free to the parents, I shall refer to them as "free entitlement sessions". The nursery offers 49 free entitlement sessions each morning and afternoon. There are a further 16 full-time-equivalent places made available as a consequence of the opening of a Children's Centre on site in September 2009. These additional places are used to accommodate working or studying parents who need further "wrap around" care in addition to the free entitlement.

11. Wrap around care is available from 8.00am - 6.00pm, five days per week, and 48 weeks of the year. The nursery is shut for a two week period in August and between Christmas and the New Year. Costs for this additional care are:

- 8:00am – 8:45am (With Breakfast) £3.00
- 8:45am – 11:45pm (No Lunch) £15.75
- 12:30pm – 3:30pm (No Lunch) £15.75
- 3:30pm – 6:00pm (With Hot snack & Dessert) £7.00

12. The oversubscription arrangements now determined are, in summary, as follows:

- i. Looked After Children and Previously Looked After Children .
- ii. Children who are residents within the school's defined catchment area.
- iii. Children who have a sibling currently attending the school.
- iv. Where there are medical grounds (supported by a doctor's certificate) why it is essential that the child attends this particular school.
- v. Children who already attend Woodnewton Nursery; although the

school gives priority to children attending the Woodnewton Nursery, there is no guarantee of a place for such children and you must apply for a place in reception in the usual way.

vi. Proximity of the child's home address to the school

13. Parents may register their child for a place at the start of the year in which the child becomes two years of age. The family are notified by letter in May preceding the start date in September. The school reports the operation of these admission arrangements as follows; "As a general rule, children are admitted in September only in the academic year that they turn 4, however if spaces become available later in the academic year, we admit the next children on the waiting list according to their date of birth and date of application. Children are admitted in priority of registration date." The tie breaker is proximity of home to school.

### Consideration of Factors

14. I accept that the Code is silent on the inclusion of nursery classes within oversubscription criteria. I have considered the reasons given by the LA for the objection and the views of the school and their solicitor and examined the factors relevant to this matter.

15. I consider first the matter of financial support. The objector suggests the inclusion of nursery classes may be in breach of paragraph 1.9 e) of the Code: It is for admission authorities to formulate their admissions arrangements, but they **must not:** e) give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation, including religious authority.

16. The school's solicitor argues firstly that the objector has not proven that the school gives priority on the basis of financial support; that a parent taking their "free entitlement hours" at the nursery does not by itself trigger a breach of paragraph 1.9 (e). He says "*For that breach to occur, the School's actions are critical and a school does not give unlawful priority to a given parent when the latter decides to take up an nursery place where there is no actual direct causal link between that particular parent's decision to take up a nursery place and the School allocating their child a subsequent place in Reception: i.e. where some non nursery children can be and are admitted instead of nursery children.*"

17. The solicitor also argues that the school contends that "*paragraph 1.9 (e) is designed to cover only situations in which there is an actual financial support, i.e. money passes from the parent to the school and that, as a matter of law, no wider interpretation should be put on those words. The fact that, by virtue of a child attending the nursery the school is funded for that place and does not constitute financial support any more than the admission of a child into Reception (which carries its own element of funding) constitutes financial support by the parent. There is no logic behind an argument that taking a place in the nursery is different in kind to taking a place in the main school*"

18. My view is that it is arguable that the free entitlement constitutes financial support. However, parents are able to purchase additional care directly from the school. The school makes it clear to parents that, while they may purchase

additional care to enable them to take advantage of the free place, gaining a place at the nursery is in no way dependent on the payment of fees and it is entirely possible for a parent to access the place without payment. No priority is given to parents who wish to pay for additional care over those who do not pay for extra care. I am minded therefore to accept the school's view that this early years entitlement funding is similar to that received for the funding of a reception child, but there is additional payment made directly to the school and it can be argued that this is financial support for the school. I have not formed a definitive view on this matter and it is not the basis for my decision in this case.

#### 19. Oversubscription in the Past

	Sept 2009 PAN 90	Sept 2010 PAN 90	Sept 2011 PAN 120	Sept 2012 PAN 120	Sept 2013 PAN 120
SEN Pupils	0	0	1	2	0
Children looked after /subsequently	0	1	2	3	2
Residents of Shire Lodge and Lodge Park Estates	54	49	69	71	70
Siblings	21	18	25	18	25
Medical Grounds	0	0	0	0	0
Nursery *	11(12%)	20(22%)	15(12.5%)	20 (16%)	20 (16%)
Proximity to school	5	12	8	6	3
Total	91	100	120	120	120

\*Shows as percentage proportion of children admitted under that criterion

20. The school, through their legal representative, argues that in the last two years the vast majority of pupils were admitted to the school under the priority for residence on the Shire Lodge and Lodge Park Estates (criterion 2) or the sibling priority (criterion 3) rather than because they attended the nursery. The number of children who were admitted under the nursery priority is very low. They argue that there is, therefore, a real and substantial opportunity for a pupil to be admitted who is not a nursery pupil and there is no pre condition requiring nursery attendance for the vast majority of entrants to Reception. The only applicants who benefitted from the nursery priority are those living outside the usual catchment area, of Shire Lodge and Lodge Park who do not have a sibling.

21. The school argues that it is reasonable to prioritise those who would then have educational continuity and benefit from joining the reception class alongside classmates who they know from their time in the nursery when looking to admit

children from outside the usual catchment area.

22. I accept that those families who perceive they have an entitlement to attend the school, in that it is their local school or they already have children attending, gain admission ahead of nursery children. I accept also that many children sit in “overlapping” categories so children with nursery places may have gained places as siblings or residents of the named estates. I can see that, despite there being 114 nursery places and a PAN of 120, the proportion of children admitted under the nursery criterion is, and has always been comparatively small, between 12 and 20 per cent. I further accept that it is likely that children in the nursery will benefit from joining the reception class with their friends

23. The question however is not do some children benefit from the nursery place and transition into reception class but rather, does that criterion confer an unfair benefit on children whose parents take advantage of a nursery place at the school in comparison to those whose parents are unable or not willing to do so, or would like to do so but are not given a place.

24. I am influenced by a number of considerations when viewing these arrangements against paragraph 1.8 “Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs,…”

25. I deal with the latter part of this paragraph first. The objector has provided no evidence, nor do I find any that these arrangements will disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs.

26. With regard to the former element; my first consideration is, a parent without other children in the school, nor living in the catchment area, looking at the data, might think that the chance of a reception place would be improved by taking up a nursery place. While it does not guarantee a place, the evidence of the last five years is that a place in the nursery would give entry into the reception class.

27. There may be parents whose child does not meet any of the priorities above and who do not want to send their child to the nursery because they have other arrangements, possibly a crèche at work or care by a family member that suits them better. There may be parents who do not want any preschool or nursery provision because they wish their child to remain at home as is their implied entitlement under the Code which says at paragraph 2.16; “Admission of children below compulsory school age and deferred entry to school - Admission authorities **must** provide for the admission of all children in the September following their fourth birthday. The authority **must** make it clear in their arrangements that: a) parents can request that the date their child is admitted to school is deferred until later in the academic year or until the term in which the child reaches compulsory school age, and b) parents can request that their child takes up the place part-time until the child reaches compulsory school age.”

28. It is quite clear that parents do not have to send their child to school,

whether full or part time, until the term in which the child is five years old. It is reasonable to infer then they should not have to attend a particular nursery class, when three or four years old, to have a better chance of gaining a place at their preferred school when the child reaches compulsory school age or indeed, in this case, to gain a place in Reception if they live outside the catchment area or do not have other children already in the school. Parents have an absolute right to wait until their child is of statutory school age before school admission. I view it as unfair then that those parents who prefer not to take up a nursery place whose children do not meet the other criteria reduce their chance of admission to the school. I consider this factor to be a contributory, but not determinative factor, in my decision.

29. I have considered the flexibility offered by the school. While child care arrangements cannot suit every family the “wrap around” care offered at the school would cover normal working hours and 48 weeks of the year and excludes fewer parents from taking up the offer than in those school nursery classes which offer only term time provision, but is limited to the flexibility provided by 16 full time equivalent places.

30. I consider next entry to the nursery class. The data tell me that, in the past, parents who do not live in the catchment nor already have children in the school can gain a reception place if they have a nursery place. This does not guarantee a reception place for September 2014 but makes it very likely. Free entitlement starts in the term after the child is three, children generally cannot gain admission to the nursery until September of the year in which they become four years of age and are admitted in order of registration. Parents wanting a nursery place at the school must make other child care arrangements when their child becomes three, either to place their child elsewhere or keep the child at home until a place becomes available. For this reason I find it is not reasonable for priority for admission to compulsory schooling to be linked for some children with whether or not they attend the nursery.

31. Children are admitted by date of birth and date of registration, there is no opportunity to appeal. The school’s website gives as information about nursery admission; “Children may be registered from the beginning of the academic year in which they turn two. You will be issued with a receipt. A letter will be sent in May, prior to your child starting in September, to confirm that a place has been allocated.” Early registration gives a child precedence which may disadvantage families who have moved into the area when their child is older and is admission via a waiting list.

32. I consider therefore whether it is fair, with reference to paragraph 14 of the Code, to determine admissions into the school (for which admissions arrangements are regulated by statute) by reference to attendance at the nursery class (admission to which is not regulated). The admission arrangements for the nursery seem to be “sign up and wait to be called”. They clearly could not be used for admission to YR. There is, for example, no opportunity to appeal and applications for a place in YR cannot be considered in the order in which they were made or were placed on a waiting list. Paragraph 2.14 of the Code prevents admission authorities from taking into account length of time on a waiting list when deciding who should receive a place outside the normal admission round should one become available. I accept that that there is no requirement for the

arrangements to comply with the Code, but getting admission to the school for some 20 per cent of places is dependent on attendance at the nursery classes for which admissions are not regulated. I view this as unfair and undermines the statutory framework Parliament has put in place for admission to compulsory schooling.

33. I consider gaining admission to the nursery by early registration, admission in September of the year in which they become four years of age and via a waiting list to be unfair for parents where this is their opportunity to gain a place in reception.

### **Conclusion**

34. The Code is silent on the matter of the inclusion of nursery/pre school provision in oversubscription criteria so I have sought to weigh up the relevant factors and have thought carefully about them.

35. I am unable to reach a definitive conclusion on whether the “free entitlement offer” to which parents who need more or different child care can purchase “wrap around” care provision, does when taken together constitute financial support and is in breach of paragraph 1.9 (e) of the Code.

36. Parents who live outside the catchment area may think they should take up a nursery place to better their chance of a school place; they may view this as unfair. However I do not find that any group, as specified by the Code, has been directly or indirectly disadvantaged.

37. I find that having that a nursery place gives no advantage to the majority of applicants who qualify by sibling connection or catchment; the school gives preference to the community it serves. I accept that attendance at the nursery confers educational benefits that continue when the child transfers to Reception. However, I do not accept the argument that this benefit counters detriment to those wishing for school place who do not have priority under higher oversubscription criteria and whose priority is determined solely by whether or not they attend the nursery as not all children are able or wish to take up a nursery place.

38. I find it unfair that admission to the school for up to 20 per cent of pupils should be dependent gaining admission the nursery through on arrangements that that would be unlawful if used for admission to YR of the school. On balance then, for this reason and those above I find that the admission arrangements are in breach paragraph 1.8 of the Code.

### **Determination**

39. 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 Woodnewton Primary School.



40. By virtue of section 88K(2) of the Act 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: 13 September 2013

Signed:

Schools Adjudicator: Jill Pullen