



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA2890

Objector: A member of the public

Admission Authority: Hertfordshire County Council for community and voluntary controlled schools (High Beeches Primary School, Roundwood Primary School, Wood End School, Manland Primary School and The Grove Infant and Nursery School).

Date of decision: 25 September 2015

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 Hertfordshire County Council.

I have also considered the arrangements in accordance with section 88I(5). I determine that they do not conform in the way set out in this decision 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 make the further revisions to its admission arrangements within two months of the date of this decision.

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 a member of the public (the objector), about the admission arrangements (the arrangements) for September 2016 for High Beeches Primary School, Roundwood Primary School, Wood End School, Manland Primary School and The Grove Infant and Nursery School (the schools). These are community primary schools for children from the ages of four to 11 (or three to seven in the case of the infant and nursery school) for which Hertfordshire County Council is the admission authority and therefore, as the objector also noted, the same admission arrangements have been determined for all the primary schools for which it is the admission authority.

2. The objection concerns the deferred entry of children to school below compulsory school age and requests for children to be admitted outside their normal age group. The objector states that the arrangements are not in accord

with the relevant provisions of the School Admissions Code (the Code) concerning each of these matters, which are contained in paragraphs 2.16 and 2.17 respectively.

Jurisdiction

3. These arrangements were determined under section 88C of the Act by Hertfordshire County Council, the local authority (the council), which is the admission authority for the schools. The objector submitted the objection to these determined arrangements on 9 June 2015. 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.

4. The objector has exercised the right not to have their identity revealed to other parties to the case, but their name and address are known to me as required by Regulation 24 of The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012.

5. I have also my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

6. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

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

- a. the objector's form of objection dated 9 June 2015;
- b. the LA's response to the objection and supporting documents, and subsequent correspondence;
- c. the council's composite prospectus for parents seeking admission to schools in the area in September 2016;
- d. confirmation of when consultation on the arrangements last took place;
- e. a copy of the minutes of the meeting of the council at which the arrangements were determined and evidence of variations made to them; and
- f. a copy of the determined arrangements and those resulting from variations made to them.

The Objection

8. The objector believes that there are three aspects of the determined admission arrangements that fail to conform with the requirements of the Code. First, the objector says that the admission arrangements themselves

make no direct reference to either paragraph 2.16 or 2.17 of the Code, but that information which concerns these paragraphs in the Code is contained in a separate document entitled “Explanatory notes and definitions 2016/17”. The objector does not say why this might contravene the Code.

9. Secondly, the objector complains that in the document “Explanatory notes and definitions” the Council does not make clear some of the matters which it is required to under paragraph 2.16 of the Code, but instead discusses the deferred entry of children to school in terms which conflict with them.

10. The objector’s third complaint is about the contents of the section “children out of year group” in the document “Explanatory notes and definitions 2016/17”. The objector believes, first, that a statement that it is the council’s policy that children are educated in their normal age group is likely to dissuade parents from making a request for an admission outside the normal age group, and ought not to be present. Secondly, the objector believes that the council’s requirement that such requests be accompanied by supporting professional evidence also fails to conform with paragraph 2.17 of the Code, since such a requirement is not made in that paragraph.

Other Matters

11. I was concerned that the council’s admission arrangements contained matters which may fail to meet the relevant requirements set out in the Code and in legislation. I wrote to it seeking its comments on my concerns. These matters were that:

(i) “rule 3” in the list of oversubscription criteria referred to linked infant and junior schools, but a list of these was not provided. Paragraph 1.9b of the Code forbids priority being given on the basis of the school previously attended unless this is a named feeder school. Parents would also not know whether or not this criterion is relevant to an application for a place at any given junior school, and this appeared to make this oversubscription criterion unclear, contrary to paragraph 1.8 which requires that criteria “*must be reasonable clear and objective*”, and

(ii) paragraph 2.14 of the Code requires that arrangements set out how waiting lists are maintained, and the council’s arrangements appeared not to do so.

Background

12. All children must attend school on a full-time basis, or be otherwise educated by their parents, at the beginning of the school term following their fifth birthday. Admission to a school before this date is an early admission. Children who are born between 1 April and 31 August are commonly referred to as “summer born” children.

13. The Code sets out requirements concerning early admissions to schools in terms of the provision that must be made by admission authorities and the ways in which parents can access it for their child. It also places requirements on admission authorities concerning the possible admission of children to

school in an age group which would not be their normal one, based on their date of birth.

14. Paragraph 2.16 of the Code says:

*“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, where they have offered a child a place at a school:*

a) that child is entitled to a full-time place in the September following their fourth birthday;

b) the child’s parents can defer the date their child is admitted to the school until later in the school year but not beyond the point at which they reach compulsory school age and not beyond the beginning of the final term of the school year for which it was made; and

c) where the parents wish, children may attend part-time until later in the school year but not beyond the point at which they reach compulsory school age.”

15. Paragraph 2.17 addresses the admission of children out of their normal age group and has the following to say:

*“Parents may seek a place for their child outside their normal age group, for example, if the child is gifted and talented or has experienced problems such as ill health. In addition, the parents of a summer born child may choose not to send their child to school until the September following their fifth birthday and may request that they are admitted out of their normal age group – to reception rather than year 1. Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.”*

16. When the current Code was approved, this paragraph was added to by the insertion of two further paragraphs, 2.17A and 2.17B. These concern the matters to be considered and the process to be adopted by the admission authority in dealing with requests for admission outside the normal age group.

17. When I visited the council’s website on 11 June 2015 I found a page with the title “Hertfordshire County Council School Admission Arrangements for 2016/17” which provided electronic links to nine documents. The council has confirmed to me it view that these nine documents collectively represent the determined arrangements. They consist of a statement of its scheme for the co-ordination of admissions to publicly funded schools within its area, four documents which set out “admission arrangements” for the different phases of education, a timeline for co-ordination, explanatory notes and definitions and separate documents listing admission numbers for primary and secondary schools.

18. The document which is opened by following the link to “admission arrangements for primary, junior and middle schools” has the heading “Hertfordshire County Council’s oversubscription criteria for community and voluntary controlled first, infant, primary, junior and middle schools for the year 2016/17”. After an introduction describing the requirements concerning children whose statement of special educational needs or education, health and care plan names a school, six rules are set out, without introduction but followed by a statement that they are applied in the order printed, as follows:

*“ **Rule 1 Children looked after and children who were looked after but ceased to be so because they were adopted (or became subject to a child arrangements order or a special guardianship order).***

***Rule 2 Medical and social:** Children for whom it can be demonstrated that they have a particular medical or social need to go to the school.*

***Rule 3 Linked school:** In the case of junior schools, children who attend the linked infant school at the time of application.*

***Rule 4 Sibling:** Children who have a sibling on the roll of the school or linked school at the time of application.*

***Rule 5 Nearest school:** Children for whom it is their nearest community or voluntary controlled school or an own admitting school or academy using Hertfordshire County Council’s admission rules.*

***Rule 6 Distance:** Children who live nearest to the school. If your child does not qualify under Rule 5, they will be under Rule 6.”*

Consideration of Factors

(i) concerning reference to paragraphs 2.16 and 2.17 of the Code within the arrangements

19. The objector complains that paragraph 2.16 and 2.17 of the Code are not mentioned in the council’s admission arrangements, which they have taken to consist, as far as primary schools are concerned, of two of the nine documents which can be reached in the way described above through the council’s website – its co-ordinated scheme and “the admission arrangements for primary, middle and junior schools”. The objector says that reference to these paragraphs in the Code is made only within the document “explanatory notes and definitions” and not, the objector says in the “*actual*” admission arrangements.

20. However this may be, there is no requirement that any paragraph within the Code is specifically mentioned by number in school admission arrangements. Matters which are set out in paragraphs of the Code which contain mandatory requirements must be adhered to, but the paragraphs themselves may or may not be mentioned. I do not uphold this part of the objection.

21. It is my view in any case that the document in which the council does set out its provisions related to the requirements of paragraphs 2.16 and 2.17 of the Code, and where it does refer to them, forms part of its admission arrangements.

(ii) concerning deferred entry to school of children below school age

22. The objector drew my attention to statements in the council's document of "explanatory notes and definitions" that mentioned parental requests for their child's entry to school to be deferred from the September after their fourth birthday on either a full or part time basis, and to such requests being considered by schools taking into account the individual circumstances of the child. The objector said that the Code in paragraph 2.16 gives parents the right to have their child's entry deferred in these ways and that this was not something which they need to request. The council had failed, the objector complained, to make clear in its arrangements those matters which it is required to do by paragraphs 2.16b and 2.16c of the Code.

23. The council has told me that it has varied its determined admission arrangements as a result of the objection which has been made concerning them and has provided me with evidence of that variation. It has also provided me with the revised wording of this part of its arrangements, and this does in my view meet the requirements made in paragraph 2.16 of the Code. However, at the time the objection was made, the council's arrangements did not do so, and I must therefore uphold this part of the objection concerning them.

(iii) concerning admissions outside the normal age group

24. The objector believes that the council's arrangements do not comply with paragraph 2.17 of the Code because they make a statement of the council's policy concerning admissions outside the normal age group and because they state that supporting evidence is to be provided when parents request a school place on this basis.

25. Paragraph 2.17 requires admission authorities to make clear the process for requesting admission out of the normal age group, and it is evident to me that the council's arrangements, both as originally determined and with the revised wording of them which it has adopted, do this. I do not uphold this part of the objection.

26. The matters which are dealt with in paragraphs 2.17A and 2.17B concern the process used by admission authorities in making decisions about such requests, and it is the process used by the council which the objector has complained about. The role of the adjudicator is to consider admission arrangements themselves and does not extend to a consideration of the process used by an admission authority in making decisions about admissions. The matters dealt with by paragraphs 2.17A and 2.17B of the Code therefore fall outside that remit, and as a result I have no jurisdiction concerning the objection which has been made about this part of the arrangements.

(iv) concerning matters raised by the adjudicator

27. The council has varied its admission arrangements by:

(i) including a list of the linked infant and junior schools to which “rule 3” applies together with its list of oversubscription criteria, and

(ii) adding a statement concerning waiting lists to its scheme for the co-ordination of admissions.

28. The first change in my view means that the varied arrangement now comply with the relevant requirements of the Code. However, as they were originally determined this was not the case, and the arrangements failed in my view to comply with paragraphs 1.8 which requires that oversubscription criteria are clear.

29. The Code in a footnote to paragraph 5 refers to the admission arrangements for schools as “*any device or means used to determine whether a school place is offered*”. The arrangements for the co-ordination by the council of admissions to schools do not fall within this definition and are not part of the admission arrangements for individual schools, as this term is used within the Code, therefore. When setting out its admission arrangements any admission authority is obliged by the Code to do so in a form accessible to parents seeking to know how places at schools are to be allocated. It is for this reason that paragraph 2.14 of the Code requires a description of how waiting lists operate to be included in the admission arrangements of schools. The council has not done this in its variation of its arrangements, and so my view is that both the originally determined arrangements and those which have resulted from the council’s variation of them, do not comply with what the Code requires concerning waiting lists in paragraph 2.14.

Conclusion

30. I have set out in the preceding paragraphs the reasons why I have come to the view that at the time the objection was made, the council’s admission arrangements:

(i) do not comply with what is required by paragraph 2.16 of the Code concerning the deferred entry to school of children below compulsory school age; and

(ii) meet the requirement of paragraph 2.17 concerning admission of children out of their normal age group.

I therefore partially uphold the objection.

31. I found the arrangements:

(i) contained an oversubscription criterion that was unclear and so not in accord with paragraph 1.8 of the Code; and

(ii) did not comply with paragraph 2.14 of the Code because they did not contain the statement concerning waiting lists that is described there.

31. The council has varied its arrangements so that the revised arrangements comply in respect of some the matters raised, but not all as I have explained.

32. I have also stated that I have no jurisdiction to consider the objection which has been made concerning the part of the arrangements that deals with the process used in considering requests for admission outside the normal age group of a child in relation to paragraphs 2.17A and 2.17B of the Code.

Determination

33. 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 Hertfordshire County Council.

34. I have also considered the arrangements in accordance with section 88I(5). I determine that they do not conform in the way set out in this decision with the requirements relating to admission arrangements.

35. 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 make the further revisions to its admission arrangements within two months of the date of this decision.

Dated: 25 September 2015

Signed:

Schools Adjudicator: Dr Bryan Slater