



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3450 and ADA3451

Objector: Lambeth Council

Admission Authority: The Governing Board of The Wyvern Federation for Vauxhall Primary School and Wyvil Primary School in the London Borough of Lambeth.

Date of decision: 20 September 2018

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2019 determined by the governing board of The Wyvern Federation for Vauxhall and Wyvil Primary Schools in the London Borough of Lambeth.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

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 within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case, I determine that the arrangements must be revised as soon as possible and by, at the latest, 31 October 2018.

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 Lambeth Council (the local authority), (the objector), about the admission arrangements (the arrangements) for Vauxhall and Wyvil Primary Schools (the schools), both foundation primary schools catering for pupils 3 to 11 years old for September 2019. The schools are part of The Wyvern Federation of schools. The objection is to the

inclusion in the oversubscription criteria of priority for children attending either of the schools' nurseries.

2. The local authority for the area in which the school is located is Lambeth Council which is the objector. Other parties to the objection are the schools and the Wyvern Federation.

Jurisdiction

3. The admission arrangements were determined by the governing board of the federation on 7 November 2017. The objector submitted her objection to these determined arrangements on 14 May 2018. 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. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter, I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
 - a. the objector's form of objection dated 14 May 2018;
 - b. the admission authority's response to the objection, supporting documents and subsequent correspondence;
 - c. supporting documents and subsequent correspondence from the local authority;
 - d. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2018;
 - e. a map of the area identifying relevant schools;
 - f. confirmation of when consultation on the arrangements last took place;
 - g. copies of the minutes of the meeting at which the governing board of The Wyvern Federation determined the arrangements; and
 - h. a copy of the determined arrangements.

The Objection

6. The objection is to the inclusion of an oversubscription criterion which gives priority of admission into the reception year (YR) for children attending the nursery of either school. The objector cites paragraph 1.39b of the Code which allows priority admission to YR of pupils in the nursery who are eligible for early years pupil premium, pupil premium or service premium.

Other Matters

7. In reviewing the arrangements, I noted that the following elements of the arrangements appeared not to conform with the requirements relating to admissions:
 - a) the absence of arrangements for admission in 2018 and/or 2019 on the schools' websites (paragraph 1.47 of the Code);
 - b) the definition of looked after and previously looked after children (paragraph 1.7 of the Code);
 - c) the placement of previously looked after children in criterion two of the oversubscription criteria (paragraph 1.7 of the Code);
 - d) criterion 5, children of staff at the school and the 'executive headteacher's discretion' (paragraph 14 of the Code);
 - e) the absence of a tie breaker in the arrangements (paragraph 1.8 of the Code);
 - f) the time frame for the waiting lists (paragraph 2.14 of the Code);
 - g) the absence of any reference to deferred or part time admission to Reception for children below statutory school age (paragraph 2.16 of the Code); and
 - h) the absence of any reference to admission of children outside their normal age group, including summer born children (paragraph 2.17 of the Code).

Background

8. The two schools are members of The Wyvern Federation of schools. This federation has one governing board which has oversight of four schools. Both schools are situated in the London Borough of Lambeth and serve some of the most deprived areas in the country. Eligibility for the pupil premium grant for the most economically deprived children is very high with 54.1 per cent in Vauxhall Primary School and 55.1 per cent in Wyvil Primary School eligible for the benefit. (The national average for primary schools is 23.3 per cent). The proportion of children with special educational needs and with English as a second language is also very high. Both schools have nursery provision. The schools have both been judged to be providing an outstanding education for their children at their last Ofsted inspections. The published admission number (PAN) for Wyvil primary school is 60 and for Vauxhall primary school is 30. The capacity of the nursery are 75 full-time equivalent children at Wyvil and 26 full-time equivalent children at Vauxhall. Currently 54 pupils attend the nursery at Wyvil and 21 attend the nursery at Vauxhall.

9. The last consultation on the admission arrangements took place in 2015 and the arrangements have remained the same since that time. The oversubscription criteria in the arrangements are, in summary, as follows;

- 1) Looked after children
- 2) Siblings and some looked after children
- 3) Children with exceptional medical or social needs
- 4) Children attending the nursery
- 5) Children of staff
- 6) Distance

Criterion 4 is the subject of this objection.

Consideration of Case

10. The local authority drew the attention of the governing board to their concern about criterion 4 in May 2017. The governing board of the school did not agree with the local authority's stance on this and determined arrangements which contained the criterion. Subsequently, the local authority submitted an objection to the Office of School Adjudicator (OSA). In addition the local authority also unilaterally amended the wording of the schools' arrangements in the local authority's own literature. The schools sought a ruling from the OSA on the amendments made by the local authority. While this is not a matter within the adjudicator's jurisdiction, I was able through the OSA to explain to the schools that as the governing board is the admission authority of the schools it is their responsibility to publish the arrangements as determined by them and to provide these arrangements to the local authority. The local authority are then required to publish the arrangements as they were determined. The fact that the local authority do not believe that the arrangements are compliant with the Code or the law does not entitle the local authority to publish arrangements which were not the determined arrangements of the school. The correct approach for a local authority (or any other body or person) believing a school's admission arrangements to be at odds with the relevant requirements is to make an objection to the OSA as the local authority also did.

11. The Code imposes mandatory requirements and includes guidelines setting out aims, objectives and other matters in relation to the discharge of function relating to admissions by admission authorities. The current edition of the Code has been in force since December 2014. The only references in the Code to priority admissions for nursery children for a place in Reception (YR) are in paragraph 1.39A and 1.39B. These allow admission authorities to give priority to children in nurseries who are eligible for the early years pupil premium, the pupil

premium and the service premium. The Code makes no reference to provision for the priority for a place in YR of other children who attend a school nursery. Currently 29 per cent of the children attending the Wyvil nursery and 11 per cent of the children attending Vauxhall nursery are eligible for the early years pupil premium and these children can be given priority admission under paragraphs 1.39A and 1.39B should the governing board choose to do so. I am therefore considering only the question of whether the school can give priority for admission to YR to children who are not entitled to the early years pupil premium.

12. As the Code is silent on the issue and neither prohibits giving priority nor gives permission for attendance at a school's nursery to be included as an oversubscription criterion for YR (for children not entitled to the early years pupil premium) I must test the criterion against the mandatory requirements of the Code. In particular, I shall consider the general requirement in paragraph 14 of the Code which states; *"in drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated"*. In addition, I have considered paragraph 1.8 of the Code which states that *"Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair and comply with all relevant legislation"*.
13. The oversubscription criterion used by the schools in full states *'children who attend either Nursery. Children who are currently attending the nursery at the time of application.'* These children are given priority over other children who do not attend the nurseries. The federation argues that progression from the nursery into YR enables children to have continuity through their Early Years provision and that this is the best way for the children to get off to a good start to their education, especially with so many starting nursery with limited or no English. The federation goes on to say that the outcomes on leaving the schools are outstanding and the platform provided by the surety of EYFS (early years foundation stage) provision through the admissions process contributes to this.
14. The nurseries in these schools cater for children who are not of statutory school age. Parents must make an application for a place for a child at a school for the year in which the child reaches compulsory school age and the school must have an admission number for the relevant year which is YR for both schools. For Vauxhall Primary School this number (published admission number (PAN)) is 30 and for Wyvil Primary School the PAN is 60.
15. In 2016, Wyvil Primary School was oversubscribed and there were four first preference applications which were not successful, meaning four children whose parents preferred this school to any other were not able to secure places there. In 2017 and 2018 all first preference applications were successful. In 2016 Vauxhall Primary School

admitted all first preference applicants, in 2017, it was oversubscribed with nine first preference applications being unsuccessful. In 2018, all first preference applicants were admitted. All children who attended the nurseries and who applied to the schools in each of the last three years have been successful and this indicates that, in years when the schools are oversubscribed, a child's chance of being allocated a place at the school is enhanced by attending the nursery.

16. In 2016, 30 children were admitted to Wyvil School from the nursery under criterion four and four children by distance (criterion five). The last distance admitted was 0.176 miles from the school. In 2017, 12 children were admitted to Vauxhall School from the nursery under criterion four and six children by distance (criterion five). The last distance admitted was 0.385 miles from the school. Any child attending the nursery in these admission years who lives more than 0.176 miles from Wyvil or more than 0.385 miles from Vauxhall would take a place in priority to children who live the same distance from the school.
17. I have tested the fairness of the arrangements to those children who may have not been allocated a place because of the higher priority given to those who attended the nursery. I have looked at the distances from the preferred school to the homes of the thirteen, first preference, children over the last three years who have been unsuccessful in their application for a place in YR. These range from 0.2 miles (four minutes walking distance) to 6.3 miles. Of the 13 children, nine live within 25 minutes walking distance to their preferred school, six of these live within 15 minutes walking distance and five of these live within 10 minutes walking distance from their preferred school. These are reasonable walking distances to a school and these applicants may live nearer to their preferred school than a child who attends the nursery. Detailed analysis shows that, particularly in the case of Vauxhall School in 2017, seven children were unsuccessful who lived very close to the last distance (the seven children lived less than 0.5 miles from the school).
18. The school says that the local area is well served by good and outstanding schools within a short walking distance, many of which have vacancies and therefore parents do not lack for choice. This may be the case but I must consider the fairness to the parent who chooses one of the schools which are the subject of this determination as a first preference and is then prevented from gaining admission because nursery children take precedence.
19. When considering the over subscription criteria a parent of a three or four year old living in the local community will see that they will be in the sixth priority category when oversubscription criteria are applied to their application, they will be behind looked after and previously looked after children, siblings, children with exceptional medical or social needs, children already attending the nursery and children of staff. These parents may think they should or even must send their child to the nursery in order to have a realistic likelihood of obtaining a place at the school.

20. Attending a nursery is not obligatory and parents may choose other provision for their children. Parents may prefer to look after their children at home or have other arrangements for child care based on family and/or work commitments. Parents do not have to send their child to school either full or part time until the term in which the child is five years old. This is their legal right and admission arrangements should not operate against them being able to make this choice at the appropriate time. In addition any family moving into the area may not be offered a place because their child did not attend the nursery.
21. I understand and accept the school's statement that it is motivated by the educational benefit it sees for children able to attend the nursery and progress to reception and that by offering additional support the school is responding to the needs of the community. My determination does not affect its scope to continue to give priority to those disadvantaged children for whom this continuity of provision is most important. For other children, the question is the balance of benefit to those who have attended the nursery against those who would like to attend the school but are unable to secure a place there because of the higher priority given to children who have attended the nursery. Currently the schools have vacancies in the nurseries and will take children who are eligible for either 15 or 30 hours free provision. In addition those who are eligible for 15 hours provision have the option to pay for additional hours. There are no other criteria for admission to the nurseries and children are accepted until the capacity is reached. The nurseries have never reached capacity and projected figures suggest that they are not likely to in the next year.
22. My conclusion is that the oversubscription criteria provide a clear advantage to those children attending the nursery over those children who may live closer to the schools but who, for whatever reason, do not or are not able to attend the nursery. The arrangements are unfair to those local parents who are unable or who choose not to send their child to the nursery and therefore breach the Code.
23. I consider that the publication of the oversubscription criteria may place undue pressure on parents to take up nursery places in order to ensure a place in reception for their child. The Code is clear that admission authorities must not require parents to take up their school places until the term in which the child reaches compulsory school age and so I consider the arrangements unfair.
24. My conclusion therefore is that taking all these considerations together the admission arrangements which give priority for attending the nursery is not compliant with the Code and I therefore uphold the objection.

Other Matters

25. In reviewing the arrangements, I noted that the following elements of the arrangements were contrary to the Code and the law;

- a) the absence of arrangements at the time of the objection for the admission in 2019 on the school websites. Paragraph 1.47 of the Code states that *“Once admission authorities have determined their admission arrangements they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on their website displaying them for the whole offer year (the school year in which offers for places are made).* This has now been rectified.
- b) the definition of looked after and previously looked after children. A note in the Code relating to paragraph 1.7 defines looked after and previously looked after children. The definition contained in the arrangements is not the same as that in the Code and is inaccurate.
- c) the placement of some looked after children in criterion two of the oversubscription criteria. Paragraph 1.7 of the Code states that *“All schools **must** have oversubscription criteria for each ‘relevant age group’ and the highest priority **must** be given, unless otherwise provided in this Code, to looked after children and all previously looked after children”.* The current arrangements place some looked after children at criterion 2 with siblings and there is no mention of previously looked after children.
- d) criterion 5, children of staff at the school and the ‘executive headteacher’s discretion’. The responsibility for admission lies with the governing board and not the headteacher. In addition, there is no explanatory note about this criterion and therefore parents applying under this criterion would not understand how priority is given. This renders the criterion unclear. Without any explanatory notes, this could also be considered to be non-objective. This is not compliant with paragraph 14 of the Code. Paragraph 1.39 of the Code allows admission authorities to prioritise children of staff at the school under certain circumstances.
- e) the absence of a tie breaker in the arrangements. Paragraph 1.8 of the Code states that *“Admission arrangements **must** include an effective, clear and fair tie breaker to decide between two applications that cannot otherwise be separated”.*
- f) the time frame for the waiting lists. Paragraph 2.14 of the Code states that *“Each admission authority must maintain a clear, fair and objective waiting list until at least 31 December of each school year of admission”.* The current arrangements do not specify a time frame.
- g) the absence of any reference to deferred or part time admission. Paragraph 2.16 of the Code covers the admission of children below compulsory school age, deferred and part time provision.

The current arrangements make no mention of deferred admission or part time provision.

- h) the absence of any reference to admission of children outside their normal age group, including summer born children. Paragraph 2.17 of the Code covers the admission of children outside their normal age group including summer born children. The current arrangements do not mention this provision.

26. The school responded that the board would amend these items in early October so that they conform to the Code. The school also explained that many of the omissions and definitions had come about because the schools had adopted wording used in the local authority's published information for parents. The schools are foundation schools and therefore the board of governors for the federation is the admission authority for the schools. This means that admission arrangements in full must be determined and published by the board on the schools' websites. The board may take advice from the local authority and/or use some of its language but it is its responsibility to ensure that the arrangements are compliant with the requirements relating to admissions and that they are complete.

Summary of Findings

27. I have considered the priority admission of children from the nursery under the requirements of the Code at paragraphs 14 and 1.8. I have concluded that the oversubscription criteria provide a clear advantage to those children attending the nursery over those children who may live closer to the schools but who, for whatever reason, do not or are not able to attend the nursery. The arrangements are therefore unfair to those local parents who are unable or who choose not to send their child to the nursery and are therefore a breach of the Code. My determination applies only to children not eligible for the early years pupil premium. Priority can continue to be given for admission to YR to children eligible for the early years pupil premium who have attended the nursery at the school.
28. In addition I have drawn to the attention of the schools eight areas of the arrangements which are non compliant with the Code. These are; the requirement to publish arrangements on the schools' websites, the definition and placement of looked after and previously looked after children, the priority for children of staff, the tie break, the lack of clarity about the waiting list and the absence of reference to part-time, deferred entry or the admission of children outside their normal age group. These elements also require attention and amendment.
29. Paragraph 3.6 of the Code states that admission authorities can revise their arrangements to give effect to a mandatory requirement of the Code, admission law or a determination of the Adjudicator. The arrangements require significant amendment before the process for the

allocation of places begins for admission in September 2019 and therefore I have set a date of the end of October for the revisions.

Determination

30. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2019 determined by the governing board of The Wyvern Federation for Vauxhall and Wyvil Primary Schools in the London borough of Lambeth.
31. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.
32. 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 within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case, I determine that the arrangements must be revised as soon as possible and by, at the latest, 31 October 2018.

Dated: 20 September 2018

Signed:

Schools Adjudicator: Ann Talboys