



Office of  
the Schools  
Adjudicator

## Determination

**Case reference: ADA3612 Woods Loke Primary School, Lowestoft, Suffolk**

**Objector: Suffolk County Council**

**Admission authority: The Governing Board of Woods Loke Primary School on behalf of the Hartismire Family of Schools (the Academy Trust)**

**Date of decision: 14 August 2019**

## 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 2020 determined by the governing board of Woods Loke Primary School on behalf of the Hartismire Family of Schools (the academy trust) for Woods Loke Primary School, Lowestoft, Suffolk.**

**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 by 30 September 2019.**

## 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 Suffolk County Council, (the objector), about the admission arrangements (the arrangements) for Woods Loke Primary School (the school), an academy primary school for 3 to 11 year olds for September 2020. The objection is to the inclusion of an oversubscription criterion which gives priority to children who attend the school's nursery.

2. The local authority for the area in which the school is located is Suffolk County Council. The local authority is the objector in this case. Other parties to the objection are the school and the academy trust.

## Jurisdiction

3. The terms of the Academy agreement between the academy trust 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 governing board, which is the admission authority for the school, on that basis. The objector submitted her objection to these determined arrangements on 15 May 2019. 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

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. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the school's funding agreement;
- d. the objector's form of objection dated 15 May 2019, supporting documents and subsequent correspondence;
- e. the school's response to the objection, supporting documents and subsequent correspondence;
- f. the local authority's composite prospectus for admissions to primary schools in 2019;
- g. maps of the area identifying admission data; and
- h. confirmation of when consultation on the arrangements last took place.

## The Objection

6. The objection is to the inclusion in the oversubscription criterion of the following; *"Pupils who are on roll at Woods Loke Nursery at the time of application. Woods Loke nursery currently has an average of 40 pupils on roll at any one time, therefore parents who chose not to send their child to Wood Loke Nursery may still be able to obtain a Reception place as there are 60 places available in Reception"*.

7. The objector suggests that this criterion unfairly disadvantages parents and carers who do not want to or cannot send their child to the nursery, therefore leaving them with little or no chance of getting a place. The objector goes on to suggest that for one-child families and/or the first child applications to the school that attendance at the nursery will be *"virtually a pre-requisite to getting a place in the Reception Year class and could be*

*therefore considered unfair*". The objector believes that parents should be able to consider their preference for nursery provision separately.

8. The objector suggests that the arrangements do not comply with the following elements of the Code; paragraphs 1.8, 1.9e, 1.9i and 1.39B. Paragraph 1.8 states that *"Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair and comply with all relevant legislation, including equalities legislation."* Paragraph 1.9 states that *"Admission authorities **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 and i) prioritise children on the basis of their own or their parents' past or current hobbies or activities"*. Paragraph 1.39B states that *"Admission authorities may give priority in their oversubscription criteria to children eligible for the early year's pupil premium, the pupil premium or the service premium who: a) are in a nursery class which is part of the school; or b) attend a nursery that is established and run by the school. The nursery **must** be named in the admission arrangements and its selection must be transparent and made on reasonable grounds"*.

## Background

9. The school is a 3-11 academy primary school in Lowestoft, Suffolk. It is a popular and increasingly oversubscribed school. The published admission number (PAN) is 60 for the reception year (YR). For admission in 2018, there were 63 first preference applications and for 2019, there were 75. The oversubscription criteria in the arrangements for admission in September 2019 followed the local authority's arrangements and can be summarised as follows;

- 1) Looked after and previously looked after children
- 2) Siblings
- 3) Catchment
- 4) Distance.

10. In December 2018 and January 2019 the school consulted on changes to the oversubscription criteria. The proposed oversubscription criteria can be summarised as follows;

- 1) Looked after and previously looked after children
- 2) Siblings
- 3) Pupils who are on roll at Woods Loke Nursery at the time of application
- 4) Distance.

11. The proposed changes removed the catchment area and introduced a new criterion giving priority to children who attend the nursery. It is this criterion which is the subject of

the objection. One response was received during the consultation period; from the local authority asking the governing board to remove criterion three from the arrangements.

12. The consultation response was discussed at the governing board's meeting on 12 January 2019. The headteacher is reported as having taken legal advice and provided the following written statement to the governing board; *"All responses have been taken into account and the Schools Admission Code says that a school can name its nursery as long as it does not prejudice pupils coming to the school who have not attended the nursery. Our nursery has 40 children attending at any one time. The PAN for the school Reception Class is 60 pupils so even if every pupil in the nursery applied to come into the Reception Class, the school still has 20 places or a third of all places available for those who have not attended the nursery"*.

13. The governing board determined the arrangements as proposed at the meeting on the 12 January 2019 and provided the determined arrangements to the local authority on the 15 January 2019.

## Consideration of Case

14. The local authority drew the attention of the governing board to its concern about criterion three in January 2019 during the consultation period. The governing board of the school did not agree with the local authority's stance on this and determined arrangements which contain this criterion. Subsequently the local authority submitted an objection to the Office of School Adjudicator (OSA) on 15 May 2019.

15. 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 admission for nursery children for a place in YR are in paragraphs 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 or 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.

16. Paragraphs 1.39A and B are clear that admission authorities may give these priorities but there is no requirement to do so. Therefore, the absence of reference to priority for pupil premium pupils from the nursery into YR in the arrangements is not, as the local authority suggest, non-compliant with the Code. Therefore, I do not consider these paragraphs relevant to this objection.

17. As the Code is silent on the issue of priority for YR for children who are not entitled to the pupil premium and neither prohibits nor specifically sanctions giving such priority, I must test the criterion against the wider mandatory requirements of the Code. I have considered paragraphs 1.9e and 1.9i as requested by the objector. Although the objector does not provide details of this part of the objection I assume that the local authority believes that the *"practical or financial support parents may give to the school"* and the *"parents' past or*

*current hobbies or activities*” relate to parents choosing to send their children to the nursery and the possibility that parents will pay for provision outside the statutory 15 hours. Paragraph 1.9e specifically addresses the payment of fees over the 15 hours and says *“The exception to this is where parents pay optional nursery fees to the school or school run nursery for additional hours on top of their 15 hour funded early education.* I am therefore of the view that these paragraphs do not render the arrangements non-compliant in terms of criterion three.

18. I have therefore concentrated my consideration on paragraph 1.8 of the Code and tested whether or not the criterion is reasonable, clear, objective, procedurally fair and complies with all relevant legislation. I have also tested the arrangements against paragraph 14 which states that *“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.”*

19. The oversubscription criterion three determined by the governing board in full states *“Pupils who are on roll at Woods Loke Nursery at the time of the application. Woods Noke nursery currently has an average of 40 pupils on roll at any one time, therefore parents who chose not to send their child to Woods Noke Nursery may still be able to obtain a Reception place as there are 60 places available in Reception”*. These children are to be given priority over other children who do not attend the nursery. The school states that children in the nursery are inclusive members of the whole school community. The nursery is physically attached to the school and staff are interchangeable between the nursery and the school. Nursery children wear the same school uniform as the rest of the school and share facilities including the assembly hall, PE and dining provision and the school fields. The nursery has the same behaviour code and rules as the school and there is one leader of the early years foundation stage which covers nursery and reception. The school plans the curriculum so that there is a smooth progression from the nursery to reception and this progression has a positive impact on the emotional well-being and confidence of the children as well as providing peace of mind for the parents.

20. The nursery at this school caters 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 in this case. The PAN is 60.

21. In 2018 the school was oversubscribed and three applicants were unsuccessful in gaining places. The last successful place was allocated to a child who lived 1.2 miles from the school. In 2019 there were 15 unsuccessful applications. Of those who were allocated under the distance criterion they all lived less than 0.9 miles from the school.

22. I have studied the addresses of all 45 pupils currently registered at the nursery. If the criterion is in place when these children apply to the school they would have priority over other children (unless they were looked after/ previously looked after or siblings) regardless of how far they live from the school. The majority of the 45 children in the nursery live between 0.2 and 2 miles from the school (the two furthest live 2.4 and 4.1 miles

from the school). I have looked at the local provision for all those children who live further than 1.2 miles away from the school and find that there are between one and four suitable schools nearer to where they live than the school which is the subject of this objection.

23. The three unsuccessful applicants in 2018 lived between 1.8 and 2.4 miles from the school and the fifteen unsuccessful applicants in 2019 live between 0.9 and 2.4 miles from the school. It is clear from the distances that had the criterion been in place for the 2019 admissions then some successful applicants would have been replaced by children attending the nursery.

24. The local authority provided useful maps showing the addresses of the unsuccessful applicants in 2018 and 2019. These showed that all the unsuccessful applicants lived outside the (then) catchment area. The second map shows the addresses of unsuccessful applicants had the criterion been applied to 2019 admissions. Seven children who are on the 2019 waiting list are currently in the nursery and would have been offered places at the school replacing seven current children. Of these seven, four are within the old catchment area and three are just over the old boundary. The local authority states that as the school is increasingly popular and successful, parents from further afield who are able to access the nursery may apply for a place at the school and be given priority over children who live much closer to the school.

25. This information was shared with the school. The school did not refute the figures but made the following points; *"It may be worth comparing the impact on the 4 in-catchment children who would have been denied a place under our proposed arrangements with the 7 nursery children who had been part of our school for a year who were denied a place this year due to the current admission arrangements. Also our nursery numbers have always been around 40 for several years so a 33% leap in numbers which would be required to deny non-nursery pupils a place seems highly unlikely"*. I take issue with the school's statement. It implies that a child who has had the benefit of a nursery place in the school for a year is in some way 'more deserving' of a place in reception than a child who has not been in the nursery. I think the school is suggesting that nursery children who are not successful in gaining a place in YR are disappointed and I am sure this is the case but it should be made clear on admission to the nursery that progression to YR is not inevitable as obligatory schooling does not start until the child is of compulsory school age. I also take issue with the figure of 33 per cent increase in numbers in the nursery being required to deny non-nursery children. As explained in paragraph 24 above the numbers are already such that should the criterion be applied, seven children would have been displaced in 2019 without an increase in numbers in the nursery.

26. 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. I note, for example, that the school's nursery operates only during term time and from 8.45 am to 3.30 pm which may not meet the needs of some families. 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. When considering the oversubscription criteria a parent of a three or four year old living in the local community will see that they will be in fourth priority category when oversubscription criteria are applied to their application, they will be behind looked after and previously looked after children, siblings and children in the nursery. 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.

27. It has been demonstrated that the addition of criterion three will inevitably lead to some children who live near to the school being denied a place in favour of a child who has attended the nursery who lives further away and I consider this to be unreasonable. 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 but the inclusion of children from a distance (even though they live nearer to a number of suitable primary schools) over those who live nearer to the school is unfair to those children and hence unreasonable in its effect.

28. My conclusion is that the oversubscription criterion provides a clear advantage to those children attending the nursery over those children who may live closer to the school but for whatever reason, do not or are not able to attend the nursery. The arrangements are unfair to those local parents who are unable to or who choose not to send their child to the nursery and are therefore in breach of the Code.

## Summary of Findings

29. I have considered the priority admission of children from the nursery under the requirements of the Code at paragraphs 1.8, 1.9e, 1.9i and 1.39B. I do not consider paragraphs 1.9e, 1.9i or 1.39 relevant to this objection. I have concluded that oversubscription criterion three provides a clear advantage to those children attending the nursery over those children who may live closer to the school but who, for whatever reason, do not or are not able to attend the nursery. The arrangements are therefore not reasonable for those parents who are unable or who choose not to send their child to the nursery and are therefore a breach of paragraph 1.8 of the Code.

## 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 2020 determined by the governing board of Woods Loke Primary School on behalf of the Hartismire Family of Schools (the academy trust) for Woods Loke Primary School, Lowestoft, Suffolk.

31. 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 by 30 September 2019.

Dated: 14 August 2019

Signed:

Schools Adjudicator: Ann Talboys