



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3729

Objector: Nottinghamshire County Council

Admission authority: the Governing Board of Alderman Pounder Infant School and Nursery, Beeston, Nottingham on behalf of the Flying High Academy Trust

Date of decision: 15 October 2020

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2021 determined by the Governing Board of Alderman Pounder Infant School and Nursery, Beeston, Nottingham.

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.

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 Nottinghamshire County Council, (the objector), about the admission arrangements (the arrangements) for Alderman Pounder Infant School and Nursery, Beeston, Nottingham (the school), an infant and nursery school for children aged 3 - 7 for September 2021. The objection mainly concerns the school governing body's decision to reduce the published admission number (PAN) for Reception (Year R) for 2021 from 70 to 60 children but also covers the process used to undertake the consultation on the proposed change and the absence of a map of the catchment area on the school's website.

2. The local authority (LA) for the area in which the school is located is Nottinghamshire County Council. The LA is the objector. Other parties to the objection are the Flying High Academy Trust and the governing board of the school.

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 academy's governing board, which is the admission authority for the school, on that basis. The objector submitted their objection to these determined arrangements on 15 May 2020. 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 15 May 2020 and supporting documents;
- b. the school's response to the objection and supporting documents;
- c. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
- d. a copy of the determined arrangements; and
- e. confirmation of when consultation on the arrangements last took place and details of how it was conducted.

The Objection

6. The objection concerns the reduction to the school's PAN from 70 to 60. The LA as the objector asserts that there will be insufficient places for children available in the area if this reduction in PAN takes place.

7. In a second part to the objection, the objector considers that the consultation did not fully comply with paragraph 1.45 of the Code which says "For the duration of the consultation period, the admission authority **must** publish a copy of their full proposed admission arrangements (including the proposed PAN) on their website together with details of the person within the admission authority to whom comments may be sent.." The objector says that the consultation did not give details of to whom, where or how comments

could be made on the proposed changes, nor did they clearly identify to consultees the proposed changes.

8. Thirdly, the objector asserts that the school's admission arrangements and school website do not give details of the catchment area. Paragraph 1.14 of the Code says that "Catchment areas **must** be designed so that they are.....clearly defined"

Other Matters

9. The school gives priority within its admission arrangements to children who attend the school's nursery. The priority for children who attend the nursery comes above children who live in the catchment area for the school but who do not have siblings at the school or at the linked junior school. I raised my concern with the school about this and discuss my findings below although I made no formal finding on this aspect of the arrangements.

Background

10. The infant school is located on a site that adjoins that occupied by Eskdale Junior School. Until these arrangements were determined, the PAN for the infant school was 70 and this is the same as the PAN for the junior school. The infant school runs a nursery as part of its provision. The school became an academy in 2018 within the Flying High Multi Academy Trust.

11. The school's admission oversubscription criteria are as follows:

- "1. Children looked after by a local authority and previously looked after children;
2. Children who live in the catchment area at the closing dates for applications and who, at the time of admission, will have a brother or sister attending the school or Eskdale Junior School (our linked junior school);
3. Children who live outside the catchment area and who, at the time of admission, will have a brother or sister attending the school or the linked junior school;
4. Children who attend Alderman Pounder Seedlings Nursery at the time of application;
5. Children who live in the catchment area at the closing date for applications;
6. Children who have a parent working at the school where the member of staff has been employed at the school for two or more years at the time at which the application for admission is made or the member of staff is recruited to fill a vacant post for which there is a demonstrable skill shortage;
7. Other children who live outside the catchment area."

12. The LA plans its provision of school places on the basis of planning areas and the school falls within the Beeston Primary Planning area. The LA has provided the following

pupil numbers and pupil number projections for the planning area and I shall refer to these later. For now, I make the point that the figures shown for 2020 in the table below which is based on a table provided by the LA are projections even though, as I discuss below, actual figures for September 2020 are available. The table provided by the LA included the two junior schools in the area. I have omitted them from this table in order to reduce the size of the table and because they each form a linked pair with an infant school and have the same PAN as the infant schools.

School Name	PAN for YR	YR actual 2019	YR 2020	YR 2021	YR 2022	YR 2023
Alderman Pounder Infant School	70	68	70	68	64	60
Beeston Fields Primary School and Nursery	50	44	45	44	42	40
John Clifford Primary School	60	58	60	59	56	53
Round Hill Primary School	75	74	76	74	70	66
Sunnyside Spencer Academy	30	27	28	27	26	25
The Lanes Primary School	90	88	92	91	87	84
Trent Vale Infant and Nursery	50	55	62	68	73	77
Planning area summary	425	414	433	431	418	405

Consideration of Case

13. There are three parts to the objection, the first part concerns the reduction in the PAN but before I consider this I intend to deal with the other two parts of the objection which concerned the consultation and the publication of a map of the catchment area on the school's website.

14. The objection is that the consultation did not give details of to whom, where or how comments could be made on the proposed changes, nor did they clearly identify to consultees the proposed changes. The LA had responded to the consultation and could see no evidence that the response that it made had been considered by the school's governing body. In response to the objection, the school provided the consultation document that was sent out concerning the proposed changes. It is very clear what the proposed change is and it is also completely clear who any response should be returned to. The school also provided the minutes of the meeting at which the responses were considered and it is clear that the LA's response had been received and was taken into account. In consequence I do not uphold this element of the objection.

15. The objector then asserts that the catchment area is not displayed on the school's website. The school responded to this point by saying that its website included a link to the LA's website which links a family's address to the appropriate school's catchment area which is then displayed as a map. I note that this is the same process which would be followed to find a catchment area for any of the schools for which the LA is the admission authority. I am satisfied that by providing a one click link from its website to the relevant information the school meets the requirements of the Code in respect of providing information about its catchment area. I also consider that the catchment area is clearly defined. I do not uphold this part of the objection.

16. I now return to the first part of the objection which is to the school's reduction of its PAN from 70 to 60. The objector argues that this reduction will mean that the LA will be unable to meet its statutory duty to provide sufficient school places in the area if its projections for pupil numbers up to 2023 are accurate. The LA recognises that pupil numbers in the area are projected to decrease but it argues that until 2023 it believes that it will require the schools in the area to maintain their PANs in order to be able to meet its projected demand. The figures provided for the area show that there is a deficit of eight places in the area for 2020 and six places for 2021. By 2022 the projections show a small surplus of seven places across the area, assuming no change to the PANs of any other schools and if the PAN for Alderman Pounder remained at 70. The LA also draws attention to uncertainty over the timing of housing development in the area which necessitates it taking a cautious view about its ability to meet demand for places. It has also commented that none of the other schools in the area has the capacity to increase their PANs.

17. The school has argued that a PAN of 70 is difficult to manage in an infant school because the school is constrained by the Infant Class Size Regulations that prevent the school having more than 30 children in a class with a single qualified teacher except in very limited specified circumstances. As a result of this, the school is obliged each year to run seven classes and at least one of these classes has to be a mixed age class. In its response to my enquiries, the school acknowledges that many schools do teach with mixed year groups. However, the headteacher considers in her professional experience, and taking into account the changes to the curriculum, mixed year teaching is not in the best interest of children. The school's experience is that mixed aged classes deter parents from choosing the school, and the headteacher says that it is inevitable that with this arrangement some parts of the curriculum would not be delivered by a qualified teacher. The spread of age and ability in the class will require the teaching assistant to play a significant role in ensuring the necessary differentiation within the class teaching.

18. The school also observes that the projections do not reflect what actually happens each year in school admissions. For example, the projections for September 2020 were for 70 pupils as can be seen in the LA's table reproduced above but the school provided the following summary of preferences for 2020:

Year	Applications	First Preference	Second Preference	Third Preference	Actual Allocations	Places Accepted by Parents at 20.7.2020
2020/21	140	49	33	28	53	52

The school goes on to argue that with 53 children it can organise the Reception Year with two classes but if the PAN remains at 70 then it could find itself having to reorganise classes mid year if it has a significant number of in-year admission requests. The school is currently organised with seven classes but if its pupil numbers in the Reception Year group exceed 60 then some adjustment of numbers will be required in order to keep the class sizes below 30 across the school. I observe from the projections provided that the school admissions are projected to exceed 60 in each of the years through to 2023. It cannot be known at present whether the low numbers admitted in 2020 compared with both the projections and with admissions in the recent past, will be repeated in 2021 or if this is a one-off difference. The numbers projected for 2021 suggest that if the school can only accept 60 children in a year group then there will be children who will be seeking places who will not be admitted.

19. In considering these arguments the key issues are whether the LA's projections justify its argument that it needs the places available while pupil numbers in the area remain at the current level or if the school's argument that organising an infant school with a PAN of 60 and thus two classes per year group is preferable to organising with a PAN of 70 and having at least one mixed age class. Above all, I must consider whether the PAN reduction would cause unfairness to a group of children.

20. There are two further consideration relevant to my consideration. First, the infant school is paired with a neighbouring junior school. The junior school gives priority in its admissions arrangements to children who attend the infant school. If the infant school reduces its PAN to 60, in three years time there will be fewer children passing through to the junior school and it is unlikely that children will move from local primary schools to attend the junior school and increase the admission numbers to make up the difference. The junior school will thus find that its numbers will have fallen to match the PAN of the infant school even if it did not intend to change its PAN. I was not provided with any evidence that the infant school had the support or otherwise of the junior school in its PAN reduction. Second, the projections indicate that there are more than 60 children who will be seeking places at the school for 2021.

21. The school's argument about classes of 30 within a PAN of 60 is persuasive and there is a clear rationale for its desire to have the PAN as a multiple of 30. However, this argument has to be balanced against the LA's statutory duty to provide sufficient places and the key question of whether any unfairness could arise to children who might not be able to secure a place at the school. The school has provided some evidence that the projections for 2020 were on the high side and certainly they have not translated into 70

children joining the school at the beginning of the current academic year. Apart from the figures given to me by the school about admissions in 2020, I have no other evidence to argue that the LA projections are incorrect and so in my considerations I shall take the LA assertion that it requires the places to meet projected need at face value. I have sympathy with the school's argument about school organisation and can understand that it may again seek to reduce its admissions to 60 when it can show the numbers support this, however, the current projections show that if the PAN is 60 then there are children who will wish to attend the school who will not gain a place. At the same time, the LA believes that it will need the places across the area and that if these children do not attend this school then there is insufficient capacity in other nearby schools take these children. These children would not be able to attend the school their parents would prefer if that school were Alderman Pounder and might have to travel some distance to another school if local schools could not admit them either and the figures provided by the LA suggest that this could well be the case. In consequence, I do not think it is right to reduce the PAN in the school for 2021. In making this decision, I take account of the fact that once the PAN has been reduced a number of things follow. First, the school will not need to consult about retaining it at the reduced level for future years and, most important, neither the LA nor any other body would be able to object to the PAN. This is because objections cannot be made to the retention of the same PAN at a school for which the admission authority is not an LA. This is set out in paragraph 3.3 b of the Code. It is accordingly important that a long-term view is taken at the point of my decision on this objection. I therefore uphold the objection in respect of the 2021 arrangements with the consequence that the school is required to reinstate its PAN of 70.

22. This is not quite the end of this story. As I have shown above, the LA's pupil number projections for 2020 for Year R for the school were significantly in excess of the numbers who were actually allocated places – 70 versus 53. If this pattern were to be repeated for 2021 then the school's case for a PAN reduction might be much stronger in a future year.

23. There is a further matter that I need to discuss. When reviewing the school's arrangements I observed that the school has an oversubscription criterion that gives priority to children who attend the school's nursery. The school also has a catchment area. While, as now, the school is admitting all children who apply for a place then the oversubscription criteria are not used and no unfairness can be said to arise to children who have not attended the nursery. However, if the school is oversubscribed then there is a potential conflict between the priority given to children living in the catchment area and those who have attended the nursery. A parent living in the school's catchment area will have a reasonable expectation that their child will gain a place at the school and will also have a lower priority for places at other schools. However, such a child could be displaced by a child from outside the catchment area who had attended the school's nursery. If this were to happen it might be the case that the arrangements could be found to be unfair and not in compliance with paragraph 14 of the Code that requires admission arrangements to be "...fair...".. The school argues that continuity for the children who attend the nursery is important. I would not want to argue against this but it is important to take into account the possible impact on other children, especially those who live in the catchment area. I have

not made a finding that the arrangements are unfair, but the admission authority will wish to keep them under review as there is scope for them to become so if the school were to be oversubscribed.

24. Paragraph 3.1 of the Code requires an admission authority to revise its arrangements within two months of the date of a determination unless the adjudicator specifies a different time scale. I do not wish to give an alternative timescale so the revisions must be made within two months of the date of the determination.

Summary of Findings

25. The objection contained three parts, I concluded that there was no substance in the parts of the objection about consultation and publication of the catchment area and did not uphold these parts. The first part of the objection concerned the LA's ability to be able to deliver sufficient pupil places in the area for 2021 if the school reduced its PAN From 70 to 60. The school argued that a PAN of 70 requires at least one mixed age class and that such a class is not as good as a single aged class. While accepting the merit of the school's argument, I decided that the statutory duty for the LA to have sufficient places available to meet demand together the potential that some children who wished to have a place at the school would not get them and might have to travel further to an alternative school possibly outside the planning area was the stronger argument for 2021. I therefore upheld the objection and the school is required to retain a PAN of 70 for 2021.

26. I also used my powers under Section 88I of the Act to look at the arrangements as a whole. The school has chosen to give priority to children who have attended the nursery before children who live in the catchment area. I have observed that while the school is admitting all children who apply this is not causing a difficulty but that there is scope for them to become so in the future and the admission authority will wish to keep this point under review.

27. The admission authority is required by paragraph 3.1 of the Code to make the required revisions within two months of the date of this determination.

Determination

28. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2021 determined by the Governing Board of Alderman Pounder Infant School and Nursery, Beeston, Nottingham.

29. 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.

Dated: 15 October 2020

Signed:

Schools Adjudicator: David Lennard Jones