

## DETERMINATION

**Case reference:** A2253

**Objector:** A member of the public

**Admission Authority:** The governing body of the Academy Trust for Langley Hall Primary Academy

**Date of decision:** 6 July 2012

### 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 the Academy Trust for Langley Hall Primary Academy for admissions in September 2013.**

**I determine that the oversubscription criterion relating to preference being given to “children who already have a place at the attached nursery, Wellingtons for Langley Hall” does not conform with the requirements relating to admission arrangements.**

**I have also considered the arrangements in accordance with section 88I (5). There are other aspects which do not comply with the School Admissions Code in the ways set out in paragraph 15 of this adjudication.**

**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 remaining revisions to 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 a member of the public who wishes to remain anonymous (the objector) about the 2013 admission arrangements (the arrangements) for Langley Hall Primary Academy (the School). The objection is to the oversubscription criterion relating to preference being given to “children who already have a place at the attached nursery, Wellingtons for Langley Hall”

### Jurisdiction

2. The terms of the Academy agreement between the Langley Hall Primary Academy (the Academy Trust) 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. The arrangements were determined by the governing body of the Academy Trust (the governing body) which is the admission authority.

3. The objector submitted an objection to these determined arrangements on 8 May 2012. As the Objector provided the Adjudicator with their name and address, an anonymous objection is allowable under Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and that 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).

The documents I have considered in reaching my decision include:

- a. the objector's form of objection dated 8 May 2012 and further email correspondence;
- b. the School's response to the objection, further correspondence and supporting documents;
- c. the response to the objection by Slough Borough Council (the Council) dated 21 May 2012;
- d. the Council's composite prospectus for parents seeking admission to schools in the area for September 2012, as downloaded from the Council's website;
- e. the admissions policy and application form as downloaded from the School's website on 24 May and 14 June 2012;
- f. the funding agreement;
- g. the revised admissions statement by email on 20 June 2012; and
- h. the second revised admissions statement, amended to include a priority for attending Langley Hall Primary Academy Saturday Nursery classes, sent by email on 22 June 2012, and a further letter on 2 July 2012.

5. I held a meeting at the School on 14 June 2012 (the meeting) with the education director of the School, the chair of the governing body, and the Council, and have taken account of information received and views expressed during that meeting and subsequent correspondence from the School related to revised arrangements.

### **The Objection**

6. The objection related to the oversubscription criterion about the preference given to "children who already have a place at the attached nursery, Wellingtons for Langley Hall" and in particular that the Code at paragraph 1.9(l) prohibits admission authorities naming a fee-paying independent school as a feeder school.

## **Other Matters**

7. In reviewing the 2013 arrangements at the meeting, I raised other aspects of the arrangements that appeared to contravene the requirement of the Code at paragraph 1.8 that oversubscription criteria must be reasonable, clear, objective, procedurally fair, and include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.

## **Background**

8. The School opened in September 2011 as part of the Free School initiative, and is state-funded for children aged from 4 to 11 years. The named nursery at the heart of the objection is Wellingtons for Langley Hall, wholly owned by the Director of Education (the director) at the School. There is no derogation in the Academy agreement giving permission for including attendance at the nursery as giving priority for admission to the school as part of the oversubscription criteria.

## **Consideration of Factors**

9. At the meeting on 14 June 2012 the director informed me that it had been her wish to have an attached nursery with the School as providing continuity of care and education from 0 to 11 years of age was central to her philosophy for setting up the nursery and primary provision together, but this had not been permitted under the rules for a free school. The fifth oversubscription criterion for the 2013 determined arrangements stated that the School would give preference to “children who already have a place at the attached nursery, Wellingtons for Langley Hall”. The School advised that this criterion had originally been discussed during the process of seeking to establish the School and it provided notes of various meetings that had taken place. The notes of these meetings indicate concerns about the proposed priority for attendance at the nursery, and whatever may have been thought might be possible during 2011 in respect of priority for admission in the event of the School being oversubscribed, the arrangements have to be tested against the Code now in force. The arrangements for admissions to the School in 2013 must comply with the Code.

10. I referred to the papers provided by the School prior to the meeting which say “The nursery is privately owned but publicly available” and explained how the criterion giving preference to children who have attended the nursery was in the view of the objector contrary to the Code at paragraph 1.9 (I) because it is privately owned, fee-paying provision. Despite pre-school children being able to have up to a set number of hours per week of state-funded nursery provision, the nursery is totally privately owned. Whether the nursery is free to the parent or the parent pays for the care, the owner of the nursery is paid for the care and by attending that nursery rather than any other nursery, priority for a place is on the basis of the care being purchased.

11. The Code at paragraph 1.9 (I) prohibits the naming of fee-paying independent schools as feeder schools and it could be argued that as the nursery is not a school, naming the nursery does not contravene the Code. I

am of the opinion that naming a private nursery is certainly against the spirit of the Code. In addition, the Code at paragraph 1.9 (e) prohibits giving priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation. By taking up a place at the nursery the parent is paying directly or indirectly through the state-funded 15 hours nursery provision or through both, and therefore there is financial support to the nursery which is an associated organisation, and this in turn gives priority for admission to the school.

12. Although the School representatives remained convinced that the Department for Education (DfE) had permitted attendance at the nursery as an oversubscription criterion, they accepted that the criterion was now contrary to the Code and agreed to delete it from the oversubscription criteria. Paragraph 3.6 of the Code allows for such an amendment to be made immediately by the admission authority as a permitted variation in order to comply with the Code. However, the School representatives stated that they may consider exploring again with the DfE whether there is any way the School could have an agreement to be exempt from some of the admission requirements so that priority could be given for attending Wellingtons Nursery.

13. The School accepted with reservation that the criterion could not be used and within a week of the meeting had submitted a revised admission statement showing the criterion had been deleted. However, the School then submitted a further revision on 22 June 2012, introducing a new criterion giving a priority for attending Langley Hall Primary Academy Nursery classes, free of charge, on selected Saturdays throughout the school year. This proposed criterion seems to me to contravene the Code at paragraph 1.8 as it lacks clarity, for example, among other matters, it is not clear how the Saturdays would be selected and by whom; it does not specify the site to be used for the nursery provision; and it may disadvantage unfairly some families where Saturday attendance may not be convenient or even possible. In addition, attending the Saturday provision could be interpreted as gaining priority by participation in a particular activity which would contravene the Code at paragraph 1.9 (i). Furthermore, as this revision introduces Saturday attendance which is neither a change to give effect to a mandatory requirement of admissions law, nor a misprint, then in accordance with paragraph 3.6 of the Code, it is not a change that can be implemented immediately by the governing body as it is not required to achieve compliance with the Code.

14. In a further letter dated 2 July 2012 the school clarified that the Saturday Nursery classes would be held on 10 Saturdays per year at Langley Hall Primary Academy and use staff employed by the Academy. Admission to the 120 places would be on a first come, first served basis, and if demand for the Nursery were to exceed the initial provision, or if there were to be religious objections to Saturdays, then Sunday opening would also be considered. However, even with this further detail, this proposed criterion still seems to me to contravene the Code at paragraph 1.8 as it lacks clarity, for example, how many of the Saturday sessions would qualify for attendance. It seems to me that attendance at the Saturday Nursery provision contravenes the Code at paragraph 1.9 (i) as it is specifying a particular activity which must be undertaken to have priority within the oversubscription criteria. Despite the

School's stated intention that Saturday Nursery provision would smooth the transition from Nursery to Reception Year and provide children with an educational ethos during their 4<sup>th</sup> year of life which is consistent with that of the Reception Year, it is neither a change to give effect to a mandatory requirement of admissions law, nor a misprint, and so is not a change that can be implemented immediately by the governing body as it is not required to achieve compliance with the Code.

15. As the objection had been properly referred, I also used my powers under s88I of the Act to review the arrangements as a whole for full compliance with the Code. The meeting considered each of the following points which could also be amended immediately as a permitted variation under paragraph 3.6 of the Code:

- a. The arrangements must have a published admission number (PAN) for admission to the Reception Year as required by paragraph 1.2 of the Code. The School agreed to amend its arrangements accordingly, and since the meeting has revised the arrangements, showing that a total of 52 pupils will be admitted to the Reception Year;
- b. To be compliant with paragraph 2.16 of the Code, the arrangements must include a statement providing for parents of children below compulsory school age the possibility of requesting the place part-time and of deferred entry. It was agreed that the Council would provide the relevant wording so that the School could include a suitable statement in its arrangements. Since the meeting the School has revised the arrangements to include a relevant statement;
- c. The wording for the reference regarding children with a statement of special educational needs where Langley Hall Primary School is named on the statement needs to be amended to say the child will be admitted (rather than "considered"). The Code at paragraph 1.6 requires that all children with such a statement must be admitted. This has been clarified in the revised arrangements;
- d. To be compliant with paragraph 1.6 of the Code, the arrangements must set out what would happen in the event there are more than 52 applications, so the criteria should have the clear title "Oversubscription Criteria", as the criteria would only operate if the School is oversubscribed, and that is after any children with a statement of special educational needs where the School is named in the Statement have been admitted. This has still to be revised in the amended arrangements;
- e. The arrangements had "Looked after children" as the first priority but must be amended to include previously looked after children in the terms set out in the Code at paragraph 1.7. This has been addressed in the amended arrangements;
- f. Regarding criterion number 4 related to catchment area, the use of the words "area traditionally served by the school..." is not sufficiently clear given the School only opened in September 2011, nor is the map

clear showing the circle that is said to describe the area. If this is meant to be a catchment area, the radius of the circle must be stated and the way distance will be measured to establish nearness to the School must be given, as required by the Code at paragraphs 1.13 and 1.14. At the meeting the Council described the Slough measuring system and confirmed this would be available for the School to use;

g. The Arrangements need a final tie-breaker to comply with the Code at paragraph 1.8 and the Council offered the School the use of the system it uses for random allocation if two or more applications cannot be separated for the final place. This has been addressed in the amended Arrangements;

h. The arrangements need to include a statement regarding the admission of twins and children of multiple birth. This still needs to be addressed;

i. To comply with paragraph 2.24 of the Code regarding a parent's right to appeal against any decision to refuse their child a place, the School's website should also have informed parents that they would have to set out the grounds for their appeal in writing. This has still to be addressed;

j. While the School did not have to participate in the co-ordinated arrangements in its first year of operation, it does for 2013 and therefore the application form is not needed for admissions to the Reception Year. If the form is needed for applications at other times then the School needs to limit the information requested, as explained in detail at the meeting; and

k. To aid clarity, the admission arrangements should include in the title the admissions year to which they apply, which has now been rectified in the amended arrangements.

I offered the School the opportunity to make amendments to the arrangements to comply with the Code, and agreed to note their progress in my determination.

## **Conclusion**

16. On the basis of the evidence available to me, I am satisfied that the oversubscription criterion giving priority for attendance at an attached nursery for which fees are payable is not permitted by the Code.

17. The second revised admissions statement which includes a priority for Saturday nursery attendance cannot in my view be inserted as it is not a variation that can be made to achieve compliance.

18. The other aspects which do not comply with the Code are set out in paragraph 15 of this adjudication, and the governing body has proposed two versions of revised arrangements to address some of these aspects. The Code requires an admission authority to make revisions to its admission arrangements as quickly as possible in order to comply with the Code.

## **Determination**

19. 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 the Academy Trust for Langley Hall Primary Academy for admissions in September 2013.

20. I determine that the oversubscription criterion relating to preference being given to “children who already have a place at the attached nursery, Wellingtons for Langley Hall” does not conform with the requirements relating to admission arrangements.

21. I have also considered the arrangements in accordance with section 88I (5). There are other aspects which do not comply with the School Admissions Code in the ways set out in paragraph 15 of this adjudication.

22. 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 remaining revisions to its admission arrangements as quickly as possible.

Dated: 6 July 2012

Signed:

Schools Adjudicator Cecilia Galloway