

DETERMINATION

Case reference: ADA/2531

Objector: Hertfordshire County Council

Admission Authority: The Governing Body of St Paul's Church of England Primary School

Date of decision: 19 September 2013

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 for St Paul's Church of England Primary School, Hertfordshire.

I have also considered the arrangements in accordance with section 88I(5). I determine that they do not conform 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 revise its admission arrangements as quickly as possible.

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 Hertfordshire County Council, the local authority (LA) for the area, the objector, about the admission arrangements (the arrangements) for St Paul's Church of England Primary School, Kings Langley, Hertfordshire (the school), a voluntary aided school for pupils aged 3 – 11 years for September 2014. The objection is to the inclusion of a criterion within the oversubscription arrangements which gives priority for admission to reception (YR) to children who have attended the school's nursery class.

Jurisdiction

2. These arrangements were determined under section 88C of the Act by the school's governing body, which is the admission authority for the school. The objector submitted the objection to these determined arrangements on 28 June 2013. 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.

3. In addition to investigating the matters raised by the objector I have also used my power under 88(5) of the Act to review the admission arrangements as a whole and considered whether they comply with the requirements relating to admission arrangements.

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 28 June 2013 and subsequent comments of 23 July together with information provided by the objector in their role as the LA about applicants who were and were not offered places at the school;
 - b. the school's responses to the objection and supporting documents dated 15, 27 and 30 July 2013;
 - c. the responses of the Diocese of St Alban's (the diocese), which is the faith body for the school, dated 15 and 24 July 2013;
 - d. the LA's composite prospectus for parents seeking admission to schools in the area in September 2013;
 - e. maps of the area identifying relevant schools and showing where successful and unsuccessful applicants for the school lived;
 - f. confirmation of when consultation on the arrangements last took place;
 - g. copies of the minutes of the meeting of the governing body at which the arrangements were determined; and
 - h. a copy of the determined arrangements.

6. I have also taken account of information received during and subsequent to a meeting I convened on 4 September 2013 at the school which was attended by representatives of the school, the diocese and the LA.

The Objection

7. The school's published admission arrangements include among its oversubscription criteria priority for children who have attended its nursery. Nursery attendance is listed as the fifth criterion on the school's supplementary information form (SIF) and as fourth criterion in

the admission policy. This apparent discrepancy is caused by the fact that in the oversubscription section of its admissions policy the school has not included its criterion relating to children of staff which is, however, included on the SIF. I note that the school's entry in the LA's composite prospectus for 2013 includes children of staff as third priority.

8. The LA in its objection refers to and quotes from a determination made by the adjudicator in 2012 in relation to another school in which the adjudicator upheld an objection to the giving of priority for admission to YR to children who had attended that school's nursery. The LA also notes that following that determination, the Secretary of State for Education, in response to a complaint made to him that the school concerned had failed to comply with the adjudicator's determination, declared that school's governing body to be in default of a statutory duty. The LA states that it suspects that prioritisation of nursery children in a school's oversubscription criteria is in breach of the Code. The LA continues that it considers that in accordance with paragraph 3.2 of the Code it is required to refer the admission arrangements of such schools to the adjudicator.

Other Matters

9. In reviewing the school's admission arrangements, I came to the view that a number of other aspects of the arrangements appeared not to conform to the law relating to admissions or to the Code or both. These matters were:
 - a. The definitions of looked after and previously looked after children and the requirement in the Code that first priority in oversubscription criteria be given to both looked after and previously looked after children;
 - b. Whether the wording in the oversubscription criteria and on the supplementary information form and clergy form were consistent with each other and whether they conformed to the requirements of the Code;
 - c. The clarity of the ranking of the oversubscription criteria;
 - d. The clarity of the definition of employment used in relation to priority given to children of staff; and
 - e. Whether the tie-breaker was adequate.

Background

10. The school is a 3 – 11 school. Its nursery class is an integral part of the school and is inspected by Ofsted on this basis. The school does not know when priority was first given for admission to YR for those children who had attended the nursery, but believes that this has been

the case since at least 2007. I know from the LA's composite prospectus that this priority was included for admissions in 2012 and 2013 and it is part of the determined arrangements for 2014.

11. The school's nursery class has 26 part time places. The nursery offers morning only provision for 38 weeks of the year. There is no provision for children to stay for longer. No fees are charged and the only provision made is the free to parents state funded provision. The same oversubscription criteria are used for nursery and YR with the obvious exception for nursery of any priority for children already attending nursery. The same SIF and clergy forms are used. The published admission number (PAN) for YR is 30.
12. The school's admission arrangements, including the SIF and clergy forms, were easy to find on its website. However, the school has removed them from its website since the objection and explained to me that it will reinstate them once a determination is made. References in this determination to the arrangements are, therefore, to the arrangements for 2014 as they were determined by the governing body at its meeting on 27 November 2012 and subsequently published on the school's website and seen by me at the beginning of July 2013.
13. The arrangements contain an introductory statement which gives the school's PAN and key information about how to apply for a place via the LA's co-ordinated scheme. There is then a heading "How Places Are Offered" which is followed by a statement that children who have a statement of special educational needs which names the school will be admitted to the school and then by a numbered list of criteria as follows:
 1. Children looked after
 2. Children who have siblings in the school at the time of entry
 3. Children whose parent or legal guardian regularly attends St Paul's Church
 4. Children with a place in St Paul's Nursery
 5. Children whose parent or legal guardian regularly attends other Church of England Churches
 6. Children whose parent or legal guardian regularly attends churches of other Christian denominations
 7. Children from the Ecclesiastical Parish of Langlebury
 8. Any other children.
14. The arrangements then contain a separate section which is headed "Over Subscription Criteria" and which is concerned with children of staff. There is nothing in the arrangements to indicate where this criterion comes in the ranking of oversubscription criteria. However, the school's entry in the LA's composite prospectus for 2013 and the school's SIF include children of staff as criterion 3 (after looked after children and siblings, and before those whose parent regularly attends St Paul's Church). In correspondence and at the meeting, the school confirmed that its intention is to give third priority to children of staff.

15. The school was oversubscribed in 2012 and 2013. In 2012, seven children whose parents put St Paul's as their first preference did not receive a place along with two children whose parents put St Paul's as their second preference but who could not be accommodated at their first preference school and one child whose parents put St Paul's as their third preference but who could not be accommodated at a higher preference school. For 2013, the corresponding figures were three first preferences, two second preferences and one third preference.

Consideration of Factors

16. The LA in its objection states that it "suspects that any prioritisation of nursery children in a school's oversubscription criteria is in breach of the School Admissions Code". The Code does include at paragraph 1.9 a number of oversubscription criteria whose use is forbidden. Priority for attendance at a school's nursery class is not categorically prohibited in this way. The Code does not give a definitive list of acceptable oversubscription criteria and the critical issue is whether a particular criterion is fair in the context of the circumstances of a particular school. I have accordingly considered whether the school's inclusion of priority for children at this nursery for this school meets the requirements of paragraphs 14 and 1.8 of the Code that all admission arrangements must be fair, clear and objective.
17. The school has provided me with the information below which shows how many children were admitted under each of its oversubscription criteria in 2012 and 2013.

Criteria	Number of children admitted to St Paul's YR in 2012	Number of children admitted to St Paul's YR in 2013
1 LAC and previously LAC	0	0
2 Sibling	17	15
3 Parent employed at school	Not part of oversubscription criteria	0
4 Attends St Paul's C E Church	2	4
5 Attends St Paul's nursery	9	8
6 Attends another C E Church	1	3
7 Attends another Christian denomination Church	1	0
8 Live in Parish	0	0

18. The school has also been able to tell me that in 2012, nine of those

admitted under the sibling rule had previously attended the nursery and that in 2013, six admitted under the sibling rule had done so.

19. Recent patterns of applications show that the school is able to accommodate all siblings, all children of parents who regularly attend St Paul's Church and all nursery children who seek a place, together with two or three children from lower ranked criteria.
20. In addition, the school has provided information to show the effect of moving the nursery criterion from criterion 5 to criterion 7 and of removing it altogether. Based on applications for 2013, this suggests that if the nursery criterion were moved to number 7, the school would reach its PAN among children being considered under this criterion and three would be admitted and five would not. However, the school has not told me how many, if any, of the eight children being admitted this year under the nursery criterion might also qualify under the criteria (attending another Church of England church or attending another Church of Christian denomination) which would have been given higher priority if the nursery criterion were moved down the list.
21. The LA has provided information and maps which show where successful and unsuccessful applicants for places live and, in respect of unsuccessful applicants, give details of the criteria under which they applied for a place at the school. It is clear from this information that a number of unsuccessful applicants who put St Paul's as their highest preference lived closer to the school – including in the Ecclesiastical Parish of St Paul's – than some of those who secured places. However, some of those who lived further away and secured places may well have done so under the church attendance or sibling criteria rather than the nursery criterion.
22. The school emphasises that children benefit from the continuity of attending nursery and moving on to YR in terms of their well-being and confidence. The school also points out that the nursery cohort is smaller than the PAN for YR, so there is always some space for children who have not attended the nursery.
23. The school has also said that it would have been helpful to have had more notice of the LA's concern and asked that if it is to be required to change its admission arrangements to remove the nursery criterion, it be allowed time to do this, as parents and others are used to the existing arrangements. The LA in response to this has pointed out that it notified schools on 12 March of its concerns after the Secretary of State's ruling in the other case referred to above. In addition, material submitted by the LA shows that it first raised this issue with schools in August 2012. The LA believes that there is plenty of time to make changes if I deem these necessary given that the YR round for 2014 does not open until November 2013.
24. The diocese supports the school's use of a nursery criterion on educational grounds and says that it considers that the school's

arrangements are clear, fair and objective. It considers a nursery criterion which comes after looked after and previously looked after children, siblings and children whose parents attend designated churches to be appropriate if that is what the governing body as the admission authority think is in the best interests of their children, families and local communities.

25. The diocese also points out that in a number of other LA areas for which it is the diocese nurseries are included in oversubscription categories in some community, voluntary controlled (VC) and VA schools and that this is understood to be compliant with the Code. While I note this point, adjudicators must consider each case on its merits and I am accordingly concerned here only with the arrangements for this school.
26. I take full account of the points made by the school and the diocese of the benefits of continuity. I recognise also that where a school is oversubscribed, there will inevitably be some parents who will be not be able to secure a place for their child. At the meeting, the LA noted that there are a number of other schools in the area served by St Paul's and that no child was faced with an unreasonably long or difficult journey as a result of failing to gain a place there.
27. The school uses the same oversubscription criteria for nursery and YR with the obvious exception for nursery of any priority for the child already attending nursery. The same SIF and clergy forms are used. Parents apply for a place at the nursery directly to the school as well as logging their application with the LA which offers a co-ordinated scheme for nursery admissions similar to the co-ordinated scheme for admissions to YR at Hertfordshire schools. The closing date for applications for September 2013 was 22 March 2013 which is two months later than the closing date for applications for YR.
28. I think that the use of the same oversubscription criteria is helpful to parents. In the first place, it means that parents who may seek a place in the nursery and then in YR only have to familiarise themselves with one set of arrangements. I welcome also the fact that no account is taken of when parents apply for a nursery place so long as this is by the deadline and I think that the deadline itself is reasonable. It is helpful also to parents that the LA seeks to co-ordinate nursery admissions and to encourage the use of a common deadline.
29. There is, of course, no requirement for nursery admission arrangements to conform to the requirements of the law and Code as they relate to admissions to YR and later years of admission and admission authorities for nursery places may choose arrangements that would not be permitted for publicly funded schools in later admission years. However, where securing a place at a particular nursery can affect a child's chance of securing a place in YR at a school, it is appropriate to consider whether the nursery's admission arrangements might undermine the statutory framework for admissions

to YR and whether they might make the YR arrangements themselves unfair.

30. There is no right for parents or others to object to nursery admission arrangements in the way that objections can be made to YR or other years governed by the law and Code. In the case of St Paul's, however, the fact that the arrangements for the nursery and YR are the same means that (providing they continue to be the same) an objection to YR arrangements will also in effect constitute an objection to the nursery arrangements.
31. At the meeting, the school explained that it was relatively rare but not unknown for the nursery to be oversubscribed and for a child to be unable to gain a place. There is no appeal mechanism should a child be refused a place at the nursery. There would, of course, be a right of appeal to an independent panel for a child refused a place in YR.
32. I have also considered the fact that nursery education is not compulsory and parents have the right to choose not to send their children to school until compulsory school age. Giving priority for attendance at nursery could be seen to undermine that right and cause parents – understandably keen to increase their chances of securing a place at an oversubscribed school – to take a place for their child at the nursery when they would prefer not to. Linked to this, the provision made by St Paul's will meet the needs of some parents but not of others. Parents who are unable because of their other responsibilities to arrange for their children to attend the sessions offered by St Paul's may consequently feel that their chances of securing a place in YR are diminished.
33. I consider that the LA notified schools of its concern in good time for them to take account of this in their consideration of admission arrangements for 2014. Moreover, the fact that a particular set of arrangements may be familiar and have been used for a number of years cannot be a reason for allowing arrangements that are unfair to continue.
34. Against this background and while commending the school for adopting nursery arrangements that reflect those for YR, I have concluded for the reasons given above that the criterion giving priority for admission to children who have attended the nursery is not fair and hence does not conform to the Code. The Act requires that the school amend its arrangements to reflect this.
35. In correspondence and at the meeting with the school, I raised a number of other respects in which the arrangements appeared not to conform to the Code.
36. The first of these concerns looked after and previously looked after children. 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 previously looked after children.’ It goes on to explain that: “Previously looked after children are children who were looked after, but ceased to be so because they were adopted (or became subject to a residence order or special guardianship order).”

37. The school’s arrangements refer to “Children looked after (see note1)”. Note 1 states ‘Children looked after and sibling(s). All “looked after” children or children who were previously “looked after” but immediately after being “looked after” became subject to an adoption, residence or special guardianship order.’ This in turn is followed by legal definitions of looked after children, adoption orders, residences orders and special guardianship orders.
38. I have no doubt that the school intends that first priority in its oversubscription criteria is to be given to both looked after and previously looked after children and, indeed, the school confirmed this at our meeting. In addition, the school has included in its arrangements a footnote to explain what it means. However, previously looked after children are not the same as, or a sub-set of, looked after children. In my view, a footnote explaining that “children looked after” is actually intended to mean “looked after and previously looked after children” is not clear. I consider that the arrangements do not in this regard meet the requirement at paragraph 14 of the Code that parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated. At our meeting, the school readily agreed to change the criterion to refer explicitly to looked after and previously looked after children.
39. I turn now to the school’s faith-based criteria and, in particular, whether the wording in the oversubscription criteria and on the SIF and clergy form were consistent with each other and whether they conformed to the requirements of the Code.
40. As a school with a religious character, St Paul’s is able to use faith-based oversubscription criteria. As with any oversubscription criteria, these must meet the requirements for fairness, clarity and objectivity and they must also conform to the provision of paragraph 1.37 of the Code that admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.
41. St Paul’s arrangements give priority to children whose parent or guardian attends St Paul’s Church and lesser elements of priority for those whose parents or guardian attend other Church of England churches or the churches of other Christian denominations.
42. The arrangements refer to “regularly attend” and a note defines “regularly” as “attending twice a month for at least two years and where the child is baptised or has received a thanksgiving service and is an active and committed member of the Church”. The SIF says that regularly means “attending twice a month for at least two years and the

child has been baptised". The clergy form asks the clergy to confirm that "this family attends Church regularly (ie for at least 2 years on a fortnightly basis, see admission criteria for details)". The form separately asks whether the child has been baptised or a service of thanksgiving has taken place.

43. At the meeting, I asked the school for its comments on the inconsistencies in the wording of the arrangements and forms. I also asked how it decided on an objective basis if a child was an active and committed member of the Church.
44. The school said that it took account only of whether one or more parent or guardian and the child attended church at least fortnightly and had done so for at least two years and whether the child had been baptised or had a service of thanksgiving. The school said that it would remove the reference to being an active and committed member of the Church (which it accepted could not be objectively tested without further information, could only sensibly relate to the parent or guardian and not the child and was not in any case necessary). The school also said that it would ensure that the arrangements, SIF and clergy form were consistent with each other and that they accurately reflected the school's intentions.
45. When I reviewed the school's arrangements, I became concerned that the ranking of the oversubscription criteria lacked clarity. In the admissions policy, there is a heading "How Places Are Offered" which is followed by eight numbered criteria. It is implicit that these are the ranked oversubscription criteria (with 1 having a higher priority than 2 and so on) but this is not made clear and, more importantly, this list does not include any reference to children of staff. There is then a separate section which is headed "Over Subscription Criteria" and which is concerned with children of staff. There appears to be nothing in the arrangements to indicate where this criterion comes in the ranking of oversubscription criteria – although the SIF lists this as criterion 3.
46. At our meeting, the school accepted that its policy needed to be clearer and agreed to make the necessary changes so that the arrangements would meet the requirements of paragraphs 14 and 1.8 of the Code.
47. As explained above, the school gives an element of priority to children of staff, although it told me that no applications for admission have to date been made on this basis. The admissions policy defines a staff member as "a person who is paid for working at the school for any length of time during a working week" whereas the SIF refers to "people who are employed by the governing body of the school". These mean different things. For example, there could be persons who are employed (for example by contractors) to work at the school who are not employees of the governing body. If such definitions are not consistent then they cannot be considered to be clear and to conform to the Code. The school agreed that it would adopt a clear definition

and ensure that it was used consistently in all parts of the admission arrangements.

48. I also considered the tie-breaker arrangements used by the school. These provide that where two children have an equal claim to the last place at the school, the tie-break will be distance from the school. The tie-break makes specific provision for where two children live the same distance from the school they live in the same block of flats and, in these circumstances, priority will be given to the child who lives in the lowest numbered flat. However, the arrangements do not cater for the admittedly rare situation where two children live in houses that are equidistant from the school. To this extent the arrangements do not meet the requirements of paragraph 1.8 of the Code. The Act requires the school to amend its arrangements accordingly.

Conclusion

49. As indicated above, I have found that the inclusion in the arrangements of a criterion giving priority for YR to children who have attended the school's nursery is unfair and thus does not conform to the Code.

50. I have also concluded that the arrangements do not conform to the Code as follows

- a. the arrangements are not clear in relation to the required priority for previously looked after as well as looked after children;
- b. the faith-based oversubscription criteria are not clear and, in relation to the requirement that children be active and committed members of their church, not objective;
- c. the ranking of the oversubscription criteria is not clear;
- d. the definition of staff is not clear; and
- e. the tie-breaker does not allow for the separation of two children who live in houses equidistant from the school.

51. I want to record that the school quickly accepted the need to change its arrangements and assured me of its desire to ensure that its arrangements conformed in all respects to the law and Code. Both the diocese and LA said that they would be happy to support the school in this.

Determination

52. 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 for St Paul's Church of England Primary School, Hertfordshire.

53. I have also considered the arrangements in accordance with section 88I(5). I determine that they do not conform with the requirements relating to admission arrangements.
54. 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 as quickly as possible.

Dated: 19 September 2013

Signed:

Schools Adjudicator: Shan Scott

