

## **DETERMINATION**

**Case reference:** ADA2363

**Objector:** Lancashire County Council

**Admission Authority:** The governing body of Whalley Church of England Primary School, Lancashire

**Date of decision:** 20 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 Whalley Church of England Primary School for admissions in September 2013.**

**I have also considered the arrangements in accordance with section 88I (5). I determine that the arrangements have not been published as required by the School Admissions Code and the first oversubscription criterion is in breach of the Code.**

**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 a representative of Lancashire County Council (the objector), about the admission arrangements (the arrangements) for Whalley Church of England Primary School (the School), a voluntary aided, primary school for September 2013. The objection is to the lack of appropriate public consultation as required by the School Admissions Code (the Code) and that the changes that have been determined will discriminate against local families.

### **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 his objection to these determined arrangements on 29 June 2012. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction. I am also using my powers under 88I of the Act to consider the arrangements as a whole.

## **Procedure**

3. In considering this matter I have had regard to all relevant legislation and the Code. The documents I have considered in reaching my decision include:
  - a. the objector's form of objection dated 29 June 2012;
  - b. the School's response to the objection and supporting documents;
  - c. the response of the Blackburn Diocesan Board of Education (the Diocese) in a letter of 16 July 2012;
  - d. a map of the area;
  - e. the Council's composite prospectus for parents seeking admission to schools in the area in September 2012 and comments in a letter of 13 July 2012; and,
  - f. a copy of the determined arrangements for 2012 and 2013.

## **The Objection**

4. The objector, a representative of Lancashire County Council (the LA), has raised two issues:
  - a. the School has determined arrangements for 2013 without appropriate consultation as required by paragraphs 1.43 and 1.44 of the Code; and,
  - b. the proposed changes in the oversubscription criteria concerning priority for local residents will discriminate against local families contrary to paragraph 1.8 of the Code.

## **Background**

5. In its latest report on the School, in February 2007, OFSTED judged the School to be outstanding and commented "*Whalley CE Primary School is a little larger than most primary schools. Most pupils live in the village, and very few receive free school meals. .... New classrooms have been added since the previous inspection to accommodate a considerable increase in pupil numbers*"
6. The School is in a rural area and is in a valley, "*the geographical features are of linear areas of population around small villages served in the main by voluntary aided schools.*" The School is oversubscribed; for the 2012 entry there were a total of 92 applications and the planned admission number was, and remains, 40.

## Consideration of factors

7. The objector claims that the public consultation did not meet the requirements of paragraphs 1.43 which requires consultation to take place for a minimum of eight weeks between 1 November and 1 March in the determination year and 1.44 which sets out who is to be consulted. The reasons given are that insufficient time was allocated to the consultation process and the determined version was different from the version consulted upon because matters not included in the consultation were changed.
8. The proposed change that was consulted on was the bringing together of the former sibling criteria which had differentiated between siblings in or out of the priority area for the School.
9. The change that was neither consulted on nor came from the consultation as an appropriate response by the School to the consultation, was the reordering of the oversubscription criteria so that local residents had a lower priority than applicants to whom the three criteria referring to children whose parents worship in designated churches apply.
10. The objector supports the priority for all siblings but believes the change in priority for local families will unfairly discriminate against local residents in breach of paragraph 1.8 of the Code which requires the oversubscription criteria to be reasonable.
11. The objector claims that it is unreasonable because the School is oversubscribed, with a pupil admission number of 40 in 2012 and 92 first preference applications, and because of the local geography it is unreasonable that local families will be potentially unable to access their local school.
12. The Diocese state that the School consulted them on the proposed arrangements but that the arrangements the School has published on their website and made available to parents is not the same as the those consulted on: *“the school has made a major change in moving criteria 3 in the 2012 policy to criteria 5 in the 2013 arrangements. This would detrimentally affect the parents who have no Christian connections but live in the community, and therefore they would find it difficult for their child to gain a place at the school.”*
13. The Diocese go on to say *“As Whalley Church of England School is the only school in the village, the Board of Education would maintain that the arrangements that they were consulted on for 2013 should be re-instated and that the “local residents” criteria in the Schools admissions arrangements for 2013 should be at criteria 3 as stated”*.
14. The LA has confirmed in a letter subsequent to the form of objection that the version of the 2013 arrangements consulted on was different from that finally determined. The LA also states that there were a number of versions of the 2012 arrangements and in particular, there was a

difference between the version of the 2012 determined arrangements passed to the LA and that forwarded to the adjudicator.

15. The School accepts that the consultation was flawed and the headteacher stated in a letter of 11 July 2012 that *"We were led to believe, or so we thought, that there was a window of opportunity to get the changes approved and implemented for September 2013. However, it must be admitted, with the benefit of hindsight, that I have misinterpreted and misunderstood, in good faith, some of the emails which I received. I must admit that the Local Authority's assertion that we did not allow enough time for proper consultation is in fact quite correct."*
16. The School also accepts that the determined version is not that which was consulted on *"However, during our discussions and deliberations, governors took the opportunity to discuss all our criteria and their order or placement"* but are now of the opinion that *"the change of order which prioritises regular church worshippers over local residents will need more consideration and wider consultation within an appropriate timescale for possible implementation in 2014"*.
17. I accept the claim by the School that it acted in good faith; however, it is clear from the School's acceptance of the objections and the LA's comments that the consultation process did not meet the requirements of paragraphs 1.43 and 1.44. There was insufficient time allowed for the consultation in breach of paragraph 1.43 and the final determination was different from that originally consulted in a way that was not an acceptable response to the consultation.
18. As I am of the view that the School has not complied with the requirements of the Code in relation to consultation, it needs to amend its arrangements so that it reinstates the oversubscription criterion for which it did not consult on any change while retaining the sibling criterion on which it consulted. Thus, in the 2013 determined arrangements, the current criterion 5 concerning children whose parents live within the area, needs to be moved to number 3, ahead of current criteria 3 and 4 which refer to parents who attend church.

### **Other Matters**

19. In reviewing the determined arrangements for 2013, I have noticed that the School failed to comply with paragraph 1.47 of the Code which requires the School to publish a copy of the determined arrangements on their web site. After making the changes referred to above the School should publish the determined arrangements as required by paragraph 1.47 of the Code.
20. The first oversubscription criterion in the arrangements does not comply with the Code as currently presented even though it is defined correctly below the criterion. Paragraph 1.7 of the Code requires the first oversubscription criterion to be looked after children and previously looked after children. The criterion "Children in public care" may be an appropriate reference to looked after children, but fails to include

previously looked after children and thus breaches the Code. The school needs to amend the criterion to comply with paragraph 1.7 of the Code.

### **Conclusion**

21. The consultation process of the School's proposed arrangements breached the requirements of paragraph 1.43 of the Code because insufficient time was allocated and because the proposals were altered without appropriate reasons after the consultation had concluded.
22. The School has failed to publish its determined arrangements as required by paragraph 1.47 of the Code and first criterion of the oversubscription criteria does not meet paragraph 1.7 of the Code as it only included previously looked after children in the description and not in the criterion itself.
23. In consequence, the School must amend its arrangements to take account of the findings of this determination and subsequently publish these as required by the Code.

### **Determination**

24. 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 Whalley Church of England Primary School for admissions in September 2013.

I have also considered the arrangements in accordance with section 88I (5). I determine that the arrangements have not been published as required by the School Admissions Code and the first oversubscription criterion is in breach of the Code.

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: 20 July 2012

Signed:

Schools Adjudicator: Dr Melvyn Kershaw