

DETERMINATION

Case reference: ADA/2528

Objector: Hertfordshire County Council

Admission Authority: The Proprietor of Christ Church Church of England School, Hertfordshire

Date of decision: 30 August 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 Proprietor of Christ Church Church of England School.

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 the strategy and policies manager of Hertfordshire County Council on behalf of the council, the objector, about the admission arrangements (the arrangements) for Christ Church Church of England (CE) School (the school), a primary academy school for 3 to 11 year olds, for September 2014. The objection is to the prioritisation of children attending the school's nursery class in the school's oversubscription criteria for the reception year group.

Jurisdiction

2. The terms of the academy agreement between the proprietor 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 body of the school which at the time was a Voluntary Aided school. At that time the

governing body was the admission authority. The school became an academy on 1 April 2013. 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 is within my jurisdiction.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
 - a. the objector's email of objection dated 28 June 2013,
 - b. the school's response to the objection and supporting documents;
 - c. the Diocese of St Alban's (the diocese) response to the objection and supporting documents;
 - d. the Hertfordshire Council's, the local authority (the LA) composite prospectus for parents seeking admission to schools in the area in September 2013;
 - e. a map of the area identifying relevant schools;
 - f. confirmation of when consultation on the arrangements last took place;
 - g. copies of the minutes of the meeting of the 12 December 2012 and the 27 March 2013 at which the governing body of the school proposed and subsequently determined the arrangements; and
 - h. a copy of the determined arrangements.

The Objection

5. The LA has objected in accordance with paragraph 3.2 of the Code which states that 'LA must refer an objection to the Schools Adjudicator if they are of the view or suspect that the admission arrangements that have been determined by other admission authorities are unlawful.' Following a determination by the adjudicator in August 2012 in relation to a different school which gave priority to nursery children, and a subsequent letter from the Secretary of State to the admission authority for this previous determination the LA contends that all other schools should adhere to the outcome of that determination.
6. The LA refers to the previous determination in its objection and suggests that the school does not comply with paragraph 1.8 of the

Code which requires oversubscription criteria to be clear, objective and procedurally fair. It also refers to paragraph 1.9 (e) of the Code which prohibits giving priority to a child on the basis of any practical or financial support parents may give to the school or any associated organisation.

7. It refers further to the previous determination and the fact that the school had changed its oversubscription criteria to place attendance at the nursery as a lower priority, but that this too was deemed by the adjudicator to be non-compliant with the Code.

Other Matters

8. I have also considered the arrangements in accordance with section 88I(5). There are two areas which are not compliant with the Code; the absence of a tie breaker in the oversubscription criteria and the requirement for both parents to sign the Supplementary Information Form (SIF).

Background

9. Christ Church CE School is an academy catering for 3 to 11 year olds. It became an academy on 1 April 2013, prior to that date it was a voluntary aided school and the governing body was the admission authority. The published admission number (PAN) for reception is 30. The school is inspected as a 3-11 provider by Ofsted and the Statutory Inspection of Anglican and Methodist Schools (SIAMS). The school is designated as a school with a religious character and a strong Christian ethos is prevalent in all areas of its published information. The nursery forms part of the foundation stage provision and has 30 places. The admission arrangements for the nursery are the same as those for the reception class with the exception of the inclusion of nursery attendance in the reception criteria. The LA administers the procedures for admission to nursery provision and this process takes place early in the year of admission.
10. The nursery provides children with the entitlement of 15 hours free early education for 38 weeks of the year. In addition the school offers nursery children the opportunity to join a lunch club for which parents pay a fee.
11. In addition to the LA's admission form parents are required to complete a SIF and return it to the school at the same time as applying through the common application form to the LA.
12. The arrangements for admission to reception in 2012 and 2013 included attendance at the nursery as the second priority within the oversubscription criteria after looked after and previously looked after children. The governing body met in December 2012 to discuss the arrangements for 2014 and determined to change the priority of the

nursery attendance to criterion 5. The LA undertook the consultation process on behalf of the governing body and reported that one objection to the arrangements had been received and that was from the LA. In addition, a number of minor changes were proposed by the LA. The governing body met on the 27 March 2013 to determine the arrangements. They made the suggested minor amendments but determined to retain the nursery attendance at criterion 5.

13. Subsequently the admission arrangements for admission to Year R for September 2014 have been published with the following oversubscription criteria;

- i. 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 (note n)
- ii. Siblings (note d) of children attending the school at the time the child will enter the school.
- iii. Children whose parents (note c) at the closing date for application to the LA worship at Christ Church at least twice a month and who have done so for at least three years up to that date.
- iv. Children whose parents (note c) at the closing date for application to the LA worship at a Christian (note a) church (whether Christ Church or elsewhere) and who have worshipped at a Christian (note a) church for at least three years up to that date, **and** whose permanent home address is in the area marked on the attached map.
- v. Children attending the Christ Church Nursery School at the closing date for application to the LA.
- vi. Children whose parents' (note c) permanent home address is in the area marked on the attached map.
- vii. Any other children.

Appropriate notes n, d, c, and a are included in the publication.

Consideration of Factors

14. The objector refers to a previous determination and uses this as the reason for the objection. Adjudicators are required to consider each objection on its own merits and to study the arrangements for compliance with the Code. Every case is different in context and arrangements. I have therefore considered this case afresh to reach my conclusion.

15. There is no reference in the Code to nursery provision and this neither prohibits nor gives permission for nursery attendance to be included in the oversubscription criteria. Therefore I have considered the arrangements against the paragraphs cited by the objector and the general mandatory requirements of the Code. I have also considered the arrangements in terms of paragraph 14 of the Code 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. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.” I have considered the relevant factors.

16. In the school's response to the objection the headteacher explains the importance of the nursery as part of the school where it forms part of the Early Years Foundation Stage of the curriculum. The nursery and reception classes work as one unit to the educational benefit of all the pupils. In addition the headteacher recognises the emotional disruption to a child (and to the class) arising from 'breaking the bonds of friendship at so young an age' if a child was unable to progress to reception from nursery.
17. The headteacher states that 80 per cent of previously successful applicants to the school would have been admitted under criteria 1 to 4 of the new arrangements had they applied at the time. He suggests that this shows that the current arrangements would allow admission of other children.
18. The Schools Admission Adviser for the Diocese of St Albans covers five main points in his response. He suggests that the criteria are clear, objective and procedurally fair and that the school makes it clear that a place at nursery does not guarantee a place in the reception class.
19. He suggests that the arrangements do not contravene the Code in terms of conditionality as, he suggests, every category places some degree of conditionality on the application and could be said to be disadvantageous to those given a lower priority but argues that the arrangements are fair and do not breach the Code.
20. He goes on to suggest that paragraph 1.9e which does not allow priority to children on the basis of any practical or financial support does not apply to these arrangements.
21. He states that as the Code makes no mention of nursery attendance and no prohibition of attendance at one as an over subscription category.
22. He concludes with a comparison of arrangements in other parts of the diocese and the many which have nursery attendance as one of the over subscription criteria and requests clarity on the issue.
23. I have considered paragraph 1.9e of the Code which states that admission arrangements '**must not** give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation including any religious authority'. The school admits children to the nursery on the basis of the early years entitlement for each child of 15 hours nursery provision over 38

weeks a year. This does not involve the parents making any direct financial contribution to the nursery.

24. The school also allows children attending the nursery to join a lunchtime club on a voluntary basis and this involves the parents paying a fee for supervision. This purchase of extra time could be construed as financial support to the school as stated in paragraph 1.9(e). I have not reached a decision as to whether this does, in fact, amount to a breach of the paragraph. As I have considered other factors in this determination in relation to the fairness of the arrangements under paragraph 1.8 and have concluded that the arrangements are unfair for other reasons and that paragraph 1.9(e) is not a determinant in this case.
25. I have considered the arrangements in terms of paragraph 1.8 of the Code which states that 'Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair and comply with all relevant legislation including equalities legislation.'
26. The school has a history of oversubscription to the reception class with 40 parents expressing the school as first preference in 2012 and 48 in 2013. As the arrangements for admission to reception in 2014 are different from previous years it is difficult to make accurate predictions of the numbers of children who would be admitted under each criterion and I have therefore looked in detail at previous admissions and projected numbers for 2014 from information provided both by the LA and the school.
27. In 2012 and 2013, with attendance at the nursery set as priority 2 in the over subscription criteria, all the nursery children were admitted to reception and the additional 2 (2012) and 3 (2013) places were filled by children under criterion 5; worship elsewhere but living in the parish. The school suggests that 80 per cent of the children moving from nursery to reception in these years would have come under criteria 1 to 4 in 2014 if the new arrangements had been in place at the time with no reference to nursery attendance. This would indicate that 20 per cent (5 or 6 children) would not have gained a place under the 2014 criteria. The school's projections for 2014 suggest that only 3 of the children in nursery would not gain a place under criteria 1 to 4.
28. I have studied the maps provided by the LA of where the children live who were allocated places in reception in 2012 and 2013. I have also looked at how this geographical spread relates to the parish boundaries or catchment area as indicated in the oversubscription criteria.
29. For both 2012 and 2013 there are a number of children allocated places in reception who live outside the parish boundary, some as far away as 5 or 6 miles. Without details of individual children it is not possible to determine accurately how many of these children, if any, are those who regularly worship at the named church but who live

outside the parish. Considering the figures provided by the school it is likely that at least some of these children would have been allocated a place under the sibling category had the new arrangements been in place. Unless they were the siblings of looked after or previously looked after, or those attending the named parish church but living outside the parish then the older children will have attended the nursery.

30. Studying previous and projected numbers it is clear that there is little chance of children living outside the parish and who do not regularly worship at the named church gaining admission to reception. This would be the case with or without the nursery attendance criterion.
31. This leaves us with other children who live in the parish who do not attend worship. No child was admitted under this criterion (criterion 6) in either 2012 or 2013. Unsuccessful applicants who live in the parish numbered 35 in 2012 (10 first preferences) and 51 in 2013.(17 first preferences).
32. I understand that when nursery admission is removed from the criteria and the remaining criteria have been applied there will only be a small number of places in reception left to allocate, but I am of the view that these places should be open to families who have either chosen not to attend the nursery, have arranged alternative nursery or pre-school provision for their children, were not allocated a nursery place or have recently moved into the area. By specifying nursery attendance even as a lower priority within the oversubscription criteria these families are disadvantaged and I therefore conclude that this is not fair and contravenes the Code under paragraph 1.8.
33. I would like to draw the attention of the admission authority to two other areas of the arrangements which do not comply with the Code. The Code requires admission authorities to include a tiebreaker so that in the event of two children living the exact same distance from the school there is a clear process for deciding who should be allocated a place. No tie breaker is currently included in the admission arrangements. This addition is needed to meet the requirement in paragraph 1.8 of the Code which states '...Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated'.
34. With reference to the SIF there appears to be a requirement for both parents to sign the form and this is a contravention of paragraph 2.4 of the Code which states that the SIF **must not** ask both parents to sign the form. The removal of the 's' from 'Signature of Parents' would make the form compliant.

Conclusion

35. I recognise that the continuity of education for children from 3 to 11 is desirable. However, giving priority for nursery attendees does advantage those children. It consequently disadvantages those parents who choose not to or are not able to use the school's nursery provision or would like to use the provision but are not allocated a place even though they may live nearer to the school. For this reason I consider this to be unfair and contrary to paragraph 14 and paragraph 1.8 of the Code.

Determination

36. 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 Proprietor of Christ Church Church of England School, Hertfordshire.

37. 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.

38. 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: 30 August 2013

Signed:

Schools Adjudicator: Mrs Ann Talboys