

## **DETERMINATION**

<b>Case reference:</b>	<b>ADA2737</b>
<b>Objector:</b>	<b>The governing body of St. John's Church of England Primary School</b>
<b>Admission Authority:</b>	<b>Bath and North East Somerset Council</b>
<b>Date of decision:</b>	<b>29 September 2014</b>

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for St. John's Church of England Primary School determined by the Bath and North East Somerset Council.**

**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 governing body, (the objector) of St. John's Church of England Primary School (the school), Keynsham, a voluntary controlled school, in an email dated 30 June 2014 concerning the admission arrangements for September 2015 (the arrangements) for the school, determined by Bath and North East Somerset Council, the local authority (the LA). The objection is to the increase in the published admission number (PAN) for the school to 60, which will in the governors' view disadvantage children with special educational needs.

### **Jurisdiction**

2. The arrangements were determined by the LA, which is the admission authority for the school. The objector submitted the objection to these determined arrangements on 30 June 2014. The governing body of a voluntary controlled school is permitted as an exception to the

prohibition in paragraph 3.3c) of the School Admissions Code (the Code) to object to an increase in the school's PAN. I am satisfied that 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**

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 objection, dated 30 June 2014 and all subsequent correspondence;
  - b. the LA's response to the objection, dated 16 July 2014;
  - c. the LA's 2015/16 primary admissions criteria for community and voluntary controlled schools;
  - d. papers relating to the LA's consultation on proposed admission arrangements for 2015/16;
  - e. the LA's primary and secondary school organisation plan 2011 – 2015;
  - f. the LA's primary and secondary school organisation plan 2013 – 2017;
  - g. the LA's composite prospectus, 'A Primary School for your Child' for 2014/2015 and for 2015/2016';
  - h. the diocesan response to the objection, dated 5 September 2014;
  - i. notes of the adjudicator's meeting with the parties to the objection, held at the school on 9 September 2014; and
  - j. the school's website.

### **The Objection**

5. The objection is to the LA's decision to raise the school's PAN by 30 places for admissions in 2015. The objector believes that the LA would need to turn the school's one ancillary teaching space into a classroom for the additional pupils and so would disadvantage pupils with special educational needs for whom this room is used as a teaching base as well as a space for behavioural and medical interventions. The objector further states that building alterations would be required to cater for an additional class, which would displace the school's one disabled toilet

and would therefore result in the school no longer meeting its statutory duties with regard to the Disability Discrimination Act (1995) and the Equality Act 2010.

### **Other matter**

6. In the course of considering the objection I reviewed the arrangements as a whole and noted that, as published in the LA's prospectus "*A primary school for your child*" there is no final tie-breaker, as required by paragraph 1.8 of the Code, for an occasion when two applicants for a final school place live at an equal distance from the school.

### **Background**

7. The school is a voluntary controlled primary school for pupils aged 4-11, with just over 200 pupils on roll. When inspected in May 2013, the school was judged outstanding in all aspects, and the report commented that "*Disabled pupils and those that have special educational needs achieve highly and make progress in line with their peers in all areas of learning.*" The inspection report also noted that "*the proportion of disabled pupils and those who have special educational needs supported through school action is below average. The proportion of pupils who are supported at school action plus or with a statement of special educational needs is also below average.*" The school had also been judged outstanding in its previous inspection of April 2008.
8. The arrangements for 2015/16 were determined by the LA on 10 April 2014, providing a standard format for its community and voluntary controlled infant, junior and primary schools.
9. The school had a PAN of 30 for admissions in 2014. The school is popular and is oversubscribed; in the admissions round for September 2013, 113 preferences were expressed for the school and 30 offers were made, and for 2014 107 preferences were expressed and 30 places allocated with the furthest direct line distance of 0.283 miles for a place under category 3.
10. The arrangements for 2015/16 provide, as required, that children with a statement of special educational need in which the school is named will be admitted, where possible within the PAN for the school. Oversubscription criteria are then, in summary:
  - A. Looked after or previously looked after children
  - B. (i) Children who live within a 1.5 mile radius of the school and for whom there will be a sibling at the school on the admission date
  - (ii) Children who live outside a 1.5 mile radius of the school but for whom there will be a sibling at the school on the admission date
  - (iii) Children who live outside a 1.5 mile radius of the school but for whom it is their closest community or voluntary controlled school and for whom there will be a sibling at the school on the admission date

- C. Children who live closest to the school as measured in a direct line

The three categories under criterion B are given equal consideration. The catchment area is clearly defined.

11. In increasing to the school's PAN, the LA drew attention to its *"statutory duty to ensure there are sufficient reception school places for all children who live in Bath and North East Somerset and also have future capacity for in year admissions."* It provided data to show that, in the Keynsham and Saltford area, approximately 252 reception places would be needed in September 2015, with 240 available if current PANs were retained for the area's five schools. There is thus a potential shortfall of 12 places, irrespective of any demand for in year admissions. For September 2016, reception admissions are projected to be 225, and for 2017, the projected need is for 233 places. In these two admission rounds, therefore, there would be projected surpluses of 15 and 7 places if current PANs were retained. The increase to the school's PAN is for 2015 only on the basis of these data.

### **Consideration of Factors**

12. The objection states that *"The usual PAN for [the school] is 30. The local authority would like to increase the school's PAN to 60 children in September 2015 for one year only."* The objector believes that the increase contravenes paragraph 1.9h) of the Code, which states that admission authorities **"must not ... discriminate against or disadvantage disabled children or those with special educational needs"**. The objector cites this part of the Code as, it is claimed, the LA wishes to turn the school's one ancillary teaching space into a classroom for the additional pupils. This space is currently *"used by the school to teach pupils with complex special educational needs. It is also used to administer the necessary medical and behavioural interventions needed throughout the day to manage the needs of pupils with disabilities"*. There are said to be no other spaces in the school suitable for these activities and so, the objector contends, the additional pupils would *"prejudice the progress and well-being of the school's most vulnerable pupils."*
13. The objector further states that building alterations would be required to make the school suitable for additional pupils; these would include providing additional toilet and washing facilities that would displace the school's one disabled toilet, so that it would no longer meet its statutory duties with regard to the Disability Discrimination Act (1995) and the Equalities Act 2010. As the proposed additional pupils move through the school, similar alterations would be required in other parts of the building.

14. The objector's final point is that a previous increase in the PAN had been unsuccessful and was abandoned because of difficulties caused by lack of space, and pressure on resources. It had then led to dissatisfaction among parents who were unable to obtain places for siblings when the PAN was reduced again.
15. In summary, the objection states that the governing body *"is of the opinion that the admission of a PAN of 60 children in September 2015 would place an unmanageable burden upon the school that will have an immediate detrimental impact upon the educational, physical, social and emotional well-being of both the children entering Reception Class and those pupils that are already on roll. Based on the past evidence of the school's unsuccessful attempt to increase its PAN, the Governing Body is of the opinion that to do so will result once again in an inability on behalf of the school to meet pupils' needs and that this will lead to a decrease in standards across the school."*
16. The LA's initial response to the objection confirms that the consultation on the 2015/16 arrangements was properly conducted according to the timescales and scope required by the Code. No changes were proposed to the arrangements themselves, but changes to the PANs of a number of schools were proposed. These amended PANs were sent for consultation to all schools on 17 October 2013, asking for an initial response by 29 November. A reminder was sent to the school on 14 November. A final list of PANs was circulated on 16 December. An officer from the School Capital Organisation Team attended a meeting of the governing body of the school on 1 April 2014 to discuss the issue.
17. The school's comments are that, with the agreement of the officer mentioned above, it responded to the 17 October proposal on 6 December, a week later than the date given by the LA, as there was a governing body meeting on 5 December. Subsequent to the governing body having voted not to accept the increased PAN, the head teacher invited LA officers to meet with governors to discuss the issue but that, by early March 2014, there had been no response. On 14 March, the LA officer emailed the school to agree attendance at the governing body meeting on 1 April, as mentioned above. The officer was unable to provide information about any financial package to support the potential 'bulge' year in the school, but undertook to provide it; the head teacher emailed the LA to repeat this request when nothing had been heard three weeks later, and financial information was received on 24 April.
18. On 18 June, the school received an email advising governors that the September 2015 arrangements had been published, showing a PAN of 60 for the school. There were then various emails between the head teacher, the chair of governors and the LA; the school and governors state that they thought there was an continuing consultation on the PAN, and had made the LA aware that there was to be an extraordinary meeting of the governing body on 26 June to allow further discussion of the matter. The school also reported contact from current

and prospective parents expressing confusion about the increased PAN and its implications for future admissions. On 20 June, the LA officer apologised in an email for any confusion and admitted that the LA had missed the deadline of 15 April for determining and then immediately publishing the 2015/16 arrangements, although in fact they had been determined within the required timescale. There was further communication between the school and the LA, with the latter making an offer on 25 June that the PAN might be changed to 45 if governors gave a written agreement that they would admit up to 60 children if required. This option had previously been considered and rejected by the governing body; the extraordinary meeting planned for 26 June was then cancelled as, according to the head teacher's account, "*it seemed that the school and the LA were no longer in consultation!*"

19. The diocesan response to the objection was to support fully the school. While it expressed a wish to increase the proportion of faith school places in the LA, and stated "*a genuine recognition of the need to ensure sufficient places*", it did not agree that the school had room to expand. It questioned whether the area position had been properly evaluated and noted that, although pupil forecasts at the time had indicated a future increase in pupil numbers, in 2005 the LA had closed two one-form entry schools and replaced them with one one-form entry school, thereby effectively removing 30 reception places per year that have not since been replaced.
20. There is now expansion taking place at two other local schools, but this will not provide the spaces required immediately. Although the LA was unable to supply details of the probable location of September 2015 applications for reception class places in the area in relation to each of the schools, it did provide overall data to indicate that there will be little, if any, spare capacity and certainly not sufficient to allow a comfortable 'buffer' in case of in-year inward movement, without providing extra places somewhere; the data previously quoted support this view. The school had been chosen as, in the judgement of the LA, it has the space to provide these extra places and because it is a highly successful school, to which parents would want to send their children, given the opportunity.
21. I have some sympathy with the head teacher when he writes "*The GB feels that it did all it could to work with the LA throughout the consultation but that it did not have the information required to do so throughout the whole process.*" However, it would be wrong to question only the responsiveness of the LA. Given that the school regards the increased PAN as a very serious threat to its stability as a community and to its provision for children with special educational needs in particular, I am surprised that, when the initial notification of a proposal to increase the PAN was communicated in October 2013, the school appears to have been content not to debate the issue formally until the planned full governing body meeting in early December. Further, if the school and governing body were minded to contest robustly the proposed change, I am surprised that they had not acquainted themselves with the requirements of the Code, in which

case they would have realised that the LA had to determine arrangements by 15 April and could not have believed they were still “in consultation” in mid June.

22. I shall now move to consider the school’s practical objections to the the PAN. These are predicated on the loss of a room which the school states to be a significant part of its approach to supporting pupils with special educational needs, including those with medical or behavioural issues. No doubt this is a useful and valuable facility, but I have two points to make. First, data suggest that the school has a lower than average proportion of pupils for whom it states the use of the room is essential. Second, on my visit to the school, while I observed some one-to-one instrumental teaching taking place in the room, it is clearly used also as a convenient storage space. I noted that the school has a large and well equipped ICT room. There is generous staff office accommodation, some used on a part-time basis, compared with many schools, and good sized outdoor areas. The combined assembly hall/dining room/PE space is a large, pleasant space; although the head teacher has a preferred way of using this space for whole school assemblies, other approaches would be possible. In my opinion, the LA’s view that there is sufficient accommodation within the school for an additional class of 30 children is correct. To accommodate these children would require some changes to the way in which the school is organised and managed, but this would be by no means an insuperable problem or one that would necessarily impair the quality of education offered. This is an outstanding school and I would expect such a school to be able to rise to the challenge of providing places that are needed for children starting school. The LA has some earmarked funding to spend on the school and, during my visit, the School Asset Manager was able to suggest various ways in which, for example, toilet and washing facilities might be improved so that the school’s concerns about meeting equality legislation could be overcome. The school might prefer to stay at its present size, but it would not be overcrowded, or impossible to manage, with up to 30 additional children on site.
23. The school also raised a number of points relating to a previous occasion when the PAN had been increased. This, it is reported by the school, resulted in problems with behaviour, in meeting individual needs, in resourcing, in accidents to pupils, and with the availability of space in general. While I do not underestimate the impact of increasing the number of children on the premises by up to almost 15 per cent, I do not believe that problems are inevitable; I repeat, this is an outstanding school in all respects, and has been adjudged so twice in the last six years. The Code at paragraph 1.3 states, in relation to an objection by community and voluntary controlled schools, “*There is a strong presumption in favour of an increase to the PAN to which the Schools Adjudicator **must** have regard when considering any such objection*”, and this would be strengthened where the provider is deemed outstanding.

24. At the meeting I held in the school, it became clear to me that both the school and the diocese were concerned that the increase in PAN might not be for one 'bulge' year only but that this might be, in effect, the thin end of a wedge. The school understandably raised the issue of parental expectations for future capacity, and also problems that might arise in the future if the 'bulge' year caused dissatisfaction when applying oversubscription criteria that reference siblings. It would be important for the LA, when publishing arrangements and supporting materials, to highlight and explain such matters clearly to parents at the outset.

25. I have considered carefully all points of view in this matter. It is clear to me, having met the parties, that the head teacher and chair of governors of the school, and the diocese, have no desire to be difficult in respect of the LA's need to provide sufficient reception places in September 2015 but that they wish to maintain the very high standards of achievement, behaviour and care that the school has established over many years. For its part, the LA has a statutory duty to fulfil, but equally has no wish to put at risk the quality of education provided by one of its best primary schools. The diocesan response to the objection sums up the situation neatly by stating that the increase in the school's PAN *"raises concerns ... on two fronts:*

- *Has the area position been properly evaluated and are the actions of the LA appropriate in the circumstances?*
- *Is the infrastructure at St John's appropriate to accommodate up to an additional 30 Reception children for what is believed to be a peak intake in September 2015, before numbers are expected to fall again in 2016."*

26. Given the points I have considered above, my response to both of these questions is, yes. It might be argued that the LA has been slow to provide the need for places identified some years ago but, given the current situation, to place one group of additional children in a high-achieving school that has sufficient space, and for which some earmarked funding is available for building alterations, appears self-evidently sensible. The space available and the LA's readiness to fund alterations mean that there should be no insurmountable difficulty in continuing to support the needs of the school's most vulnerable pupils.

27. I conclude, therefore, that the increase in the PAN of the school to 60 for admissions in 2015 does not contravene paragraph 1.9h) of the Code, or equalities legislation. I do not uphold the objection.

## Other matter

28. I turn now to the other matters mentioned above. In the LA's prospectus "*A primary school for your child*" the oversubscription criteria contain no final tie-breaker, as required by paragraph 1.8 of the Code, where two applicants for a final school place live at an equal distance from the school. Paragraph 1.8 states that "*Admission arrangements must include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.*" While the arrangements are clear that admission numbers will be breached to allow places to be allocated where there are children from multiple births living at the same address, the situation of two or more children competing for one place and living at different addresses that, even if unlikely, are equidistant from the school is not covered. Details of a suitable tie-breaker need to be added to the arrangements as quickly as possible,

## Conclusion

29. The objection draws attention to difficulties that might be caused to the school by the increased PAN, both in terms of the infrastructure of the site and of the potential effect on the quality of its provision and outcomes, especially in meeting the needs of its most vulnerable pupils. The LA requires additional reception places for September 2015 within the area of the school, and has concluded that the school offers the best location for these additional places. It has already identified earmarked funding to make some essential alterations to the building.
30. I found that there had been poor communication at times between the school and the LA, including confusion about dates, the provision of information, and the status of consultations.
31. On a visit to the school, I found that there is adequate space to accommodate extra pupils and was reassured that the LA has funding to ensure that facilities continue to meet statutory requirements. I do not agree that to accept extra pupils would of necessity lead to the school being in breach of paragraph 1.9h) of the Code or of equalities legislation. I am also mindful of the strong presumption in favour of an increase in PAN. I therefore do not uphold the objection.
32. In considering the arrangements as a whole, I find that they do not include an effective final tie-breaker as required by paragraph 1.8 of the Code.
33. It is for this reason that I conclude that the arrangements are not compliant with the Code and must be revised as soon as possible.

## Determination

34. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for St. John's Church of England Primary School determined by the Bath and North East Somerset Council.
35. 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.
36. 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: 29 September 2014

Signed:

Schools Adjudicator: Andrew Bennett