



**DETERMINATION**

<b>Case reference:</b>	<b>ADA3209</b>
<b>Objector:</b>	<b>The Chair of Governors of Shenfield St Mary's Church of England Primary School</b>
<b>Admission Authority:</b>	<b>The Becket Keys Church of England Free School Trust, Brentwood, Essex</b>
<b>Date of decision:</b>	<b>26 August 2016</b>

**Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2017 determined by The Becket Keys Church of England Free School Trust for Becket Keys Church of England School, Brentwood, Essex.**

**I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.**

**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 within two months of the date of the determination.**

**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 Chair of Governors of Shenfield St Mary's Church of England Primary School, (the objector), about the admission arrangements for September 2017 (the arrangements) for Becket Keys Church of England School, Brentwood (the school), an academy free school with a religious character for boys and girls between the ages of 11 and 19 in the diocese of Chelmsford (the diocese). The objection is to the addition of an oversubscription criterion that names two feeder schools.**
- 2. The local authority (LA) for the area in which the school is located is Essex. The LA is a party to this objection. Other parties to the objection are the school, the diocese and the objector.**

## **Jurisdiction**

3. The terms of the Academy agreement between the free school trust and the Secretary of State for Education require that the admissions policy and arrangements for the free school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing body, which is the admission authority for the school, on behalf of the Russell Education Trust (RET) Becket Keys Church of England Free School Trust on that basis. 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. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

## **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 15 May 2016 and supporting documentation;
  - b. the school's response to the objection and supporting documents;
  - c. the LA's response to the objection and supporting documents;
  - d. the comments of the diocese, which is the religious authority for the school;
  - e. a copy of the Church of England Board of Education/National Society Advice to Diocesan Boards of Education on admissions to Church of England schools (June 2011);
  - f. the parties' further comments on responses made by the objector, the school, the LA and the diocese;
  - g. the LA's composite prospectus for parents seeking admission to schools in the area in September 2017;
  - h. a map of the area identifying primary and secondary schools;
  - i. documentation concerning the consultation on the proposed 2017 arrangements;
  - j. a redacted copy of the minutes of the meeting of 9 February 2016 at which the governing body of the school determined the 2017 arrangements; and
  - k. a copy of the determined arrangements for 2017, including the supplementary information form (SIF).

I have also consulted the websites of the school and the LA.

### **The Objection**

6. The objection is to the amendment of an oversubscription criterion in the school's arrangements for 2017. This criterion, which is concerned with children who are "non-faith" or "other" applicants, was previously based solely on distance between applicants' homes and the school. It now gives a priority to applicants who, at the time of application, are registered as pupils of one of two named Church of England primary schools. The objector contends that this criterion is in breach of paragraph 1.8 in the Code in that it is not reasonable in itself, and of paragraph 1.15 in that the selection of feeder schools was not made on reasonable grounds. This latter contention is made on the basis that: the decision to include the criterion did not take sufficient account of responses to the consultation; that one of the named schools is less close than another Church of England primary school not named in the new criterion; that reasons given for naming the two schools are not reasonable; and that the naming of these schools limits the availability of places at the school for children living locally, notably those attending Shenfield St Mary's Church of England primary school, on whose behalf the objection was raised.

### **Other Matters**

7. In considering the objection, I looked at the arrangements as a whole and brought to the attention of the admission authority the following points: that there is no mention of admitting children with an Education, Health and Care (EHC) plan that names the school, as well as those with a statement of special educational needs, as set out in paragraph 1.6 of the Code; that the definition of looked after and previously looked after children as detailed in paragraph 1.7 of the Code, and footnotes to that paragraph, is incomplete. I noted also that a priest or minister, with an applicant's agreement, is invited to consult other members of the congregation in order to confirm their judgement of a family's attendance at church, which may not comply with having regard to diocesan guidance (as required by paragraph 1.38 in the Code) or with the requirements for objectivity and for making it easy for parents to understand how places for the school will be allocated, as required in paragraph 14 of the Code.

### **Background**

8. The school is a Church of England co-educational academy free school with a religious character, for pupils between the ages of 11 and 19. It opened in September 2012 with capacity for 1050 pupils and currently has about 450 on roll. It was inspected by Ofsted in May 2014, when there were fewer than 300 pupils on roll, and was judged outstanding in all aspects. The published admission number (PAN) is 150 and the school is oversubscribed; for entry to the school in September 2016, there were 643 applications in total, of which 185 were first preferences.

9. The admission authority consulted, during December 2015 and January 2016, on a proposed change to the arrangements for 2017. Following the consultation, the governing body decided to amend the oversubscription criterion applied to what it described as “*open’ or ‘non-faith’ applicants*” by adding a clause giving priority within this final criterion to “*Students who at the time of application are registered as students at either St Thomas’ of Canterbury C of E Junior School, CM15 9BX or at St Peter’s C of E School, CM14 5QN.*” The outcome of this consultation process and the subsequent change to the arrangements are the subject of this objection.

10. The oversubscription criteria for admission to the school in September 2017 are, in summary:

1. Looked after and previously looked after children
2. Children who require entry because of significant medical needs
3. Children whose parents have been granted Founders’ status of the school by the Secretary of State
4. Children who, on the date of admission, will have a sibling on the roll of the school
5. After the application of 1, 2, 3 and 4 above up to 50 per cent of the remaining places to applicants who meet the “*faith criterion*”.

If more applications are received than places available, those living closest (as measured by the LA’s published process) will be offered a place.

6. After the application of 1, 2, 3, 4 and 5 above remaining places will be offered in the following order:
  - (i) Students who at the time of application are registered as students at either St Thomas’ of Canterbury C of E Junior School, CM15 9BX or at St Peter’s C of E School, CM14 5QN
  - (ii) Any other applicant.

If more applications are received than places available, those living closest (as measured by the LA’s published process) will be offered a place.

11. The “*faith criterion*” in the above list is based on regular church attendance (which is defined as at least fortnightly for two years), confirmed by a priest or minister on a SIF that all applicants are required to complete if seeking a place against criterion five.

## Consideration of Case

12. Before focusing on the central issue of this objection (which is the naming of the two feeder schools, seen by the objector to disadvantage another local school in particular), I shall first consider the objector's contention that the meeting of the governing body on 9 February 2016, at which the 2017 arrangements were agreed and determined, did not take proper account of all responses received to the consultation. I note that the objector does not suggest that the admission authority failed in any way to comply with paragraphs 1.42-1.45 of the Code concerning the nature or conduct of the consultation process. The minutes of the governors' meeting record "*strong support for this proposal from the majority of respondents*" and this is quantified in the "*Decision on the Admissions Policy for 2017 Entry*", subsequently published on the school's website, which states that the proposal had been supported by three in four of the 76 responses received. The minute of the governors' meeting provides the additional detail that almost all responses had been from the parents of primary school pupils, and the majority of those from St. Peter's school, one of the two establishments it was proposed to add to the arrangements as named feeder (or "priority") schools. The minute went on to record that "*Governors considered the objections to the proposal of parents from St Mary's and All Saints pupils. However, these were not felt to be sufficiently strong to outweigh the strong support from the majority of respondents.*"
13. The objector stated that he was "*surprised at the extent of redacted text*" in these minutes, redaction which conceals the identities of those present at, and contributing to, the meeting. He further argues in his objection that "*The body of opinion represented against this move is substantial and is not properly reflected by the Becket Keys decision.*" The objector's contention is that a full account of all responses to the consultation, including those not in favour of the suggested change, should have been recorded and that the discussion, having weighed all the points – both in favour of the change and those against it – raised by respondents should have been minuted in greater detail. The objector also points out that membership of the governing body is public knowledge and anyone with an interest in its proceedings is entitled to know details of attendance and of individual contributions to the debate, other than anything properly considered to be private or confidential and formally declared as such. However, the admission authority has not contravened any explicit requirement of the Code in conducting its consultation and making its decision, although greater transparency in the account of its final reasoning might have reduced to some extent the inevitable disappointment on the part of those who were against the change to the arrangements, by providing a fuller explanation of the decision-making process and of the rationale behind the change.
14. I move now to consider the main issue in this objection, that is, the reasonableness of identifying the two feeder schools in the school's arrangements for 2017. While the schools are called "*priority schools*"

in the arrangements, I regard this as an alternative description for “feeder schools” and, as such, regard their naming as subject to the Code’s requirements in paragraph 1.15.

15. The two schools in question are St Thomas’ of Canterbury C of E Junior School and St Peter’s C of E Primary School, both in Brentwood, the latter in the more rural South Weald district. St Thomas of Canterbury Junior School is located on a site almost opposite Becket Keys School; the distance between St Peter’s Primary School and Becket Keys is 2.1 miles walking, or 2.3 miles by car. Shenfield St Mary’s Church of England Primary School, on behalf of whose pupils the objection has essentially been made, is 0.9 miles walking, or 1.3 miles by car from Becket Keys. Shenfield St Mary’s, then, is obviously closer to Becket Keys than is St Peter’s, although it could not be argued that the distance between Becket Keys and St Peter’s is especially great.
16. Having said that, the objector contends that places at Becket Keys should be prioritised for those children living closest to it and questions also why this change in the arrangements should be necessary at this time. He refers to the notes in the school’s admissions policy concerning “priority schools” which state that Becket Keys was founded *“due to the ‘vision’ of the Head Teachers of St Thomas’ and St Peter’s primary schools”* and goes on to comment that *“[t]his is no good reason to prioritise the admission of children from the two schools to the disadvantage of the children attending other local schools. The school has been in operation for a number of years and no satisfactory explanation is given as to why this is now an important issue requiring this significant change. The ‘vision’ or the absence of ‘vision’ on the part of teachers is not a justifiable basis for a decision on the allocation of school places ...”*.
17. Paragraph 1.15 says that *“The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds.”* The objector raises concerns in connection with this point relating to potential conflicts of interest given the current and previous roles of the head teacher of Becket Keys and some members of the governing bodies of both that school and of St Peter’s.
18. The “reasonableness” of naming feeder schools will depend on a number of circumstances, some general and some more specific, or indeed local. In general, an adjudicator would expect there to be significantly closer curricular and pastoral links between a school and its named feeder(s) than with other schools to which places may be allocated. It is common for secondary schools with a religious character to have feeder schools of the same religious denomination or affiliation as in this case, although the choice of which such schools must still meet the test of reasonableness. Relative distances between the school, its named feeder(s) and other schools within reasonable travelling distance might be an additional factor in considering overall “reasonableness”.

19. Taking that last factor first, the LA – although it had no specific comment to make on the objection itself – supplied maps of the area showing the location of schools; these maps broadly support the objector’s contention that there are “*other, local, closer primary schools*” to Becket Keys than St Peter’s. The objector makes the same claim in respect of the school “type” argument for feeder schools, stating that “*other local and geographically closer Church of England schools are of the same relationship type.*” The degree of “closeness” of these latter schools is, I think, arguable; nonetheless, I agree that three other Church of England primary schools are, if not closer, then not significantly further away from Becket Keys than is St Peter’s. To justify “reasonableness” based on type of school together with distance is not straightforward or obvious where only two schools are named, given a ‘cluster’ of similar schools all within what would be regarded as a fairly ‘tight’ urban area. I am bound also to consider that, as a rural school, outside the more central urban area, St Peter’s is likely to draw its pupils from a wider catchment than the more urban schools and so the distance between the school gates of St Peter’s and Becket Keys is not necessarily an accurate measure of a child’s travelling distance from home to the secondary school. In this context, it could be argued that the distances a number of St Peter’s pupils would have to travel to Brentwood County High School, for example, might not be significantly different from the distances to Becket Keys. The school sent me a list of relative distances between various schools that show none to be very great; its figures confirm the distance from St Peter’s to Becket Keys as 2.1 miles walking and 2.3 by car, while the distance from St Peter’s to Brentwood County High School is 2.5 miles by car and 3.0 miles walking. Although two other named secondary schools are further away (but still less than 5 miles by car), these figures hardly sustain the school’s view that “*Any St Peter’s pupils making Becket Keys their first choice and not getting a place will face a substantially longer journey to access another secondary school in Brentwood.*”
20. The diocese did not make a formal objection to the proposed change in the school’s arrangements but the director of education wrote informally – and in a personal capacity – to the head teacher at the end of the consultation period and opined, “*I do urge a way forward is identified that does not have the unintended consequence of conveying an impression that some churches/church schools serving the locality are more equal than others ... I do hope that whatever is finalised is able to assist local church schools in strengthening rather than restricting bonds of friendship between Becket Keys and the church schools and their churches across Brentwood.*” This diocesan director of education also responded to my enquiries, stating that the change in the school’s arrangements was, in his personal view, “*unwise and could be construed as unfair ... Where the named schools are clearly the closest to the secondary school, I can understand the logic ... [but] the naming of some, but not all, Church of England primary schools in the vicinity as conferring an admissions advantage is undesirable.*”
21. The school’s response to the objection was that “*Becket Keys is the closest secondary school to St Peter’s CE School and to St Thomas*

*CE School. St Peter's pupils are disadvantaged because although Becket Keys is their nearest secondary school, they are still at some distance from the school and their students are less likely to get places. Parents feel this very keenly because Becket Keys is the only maintained [sic] Church of England School in Brentwood and one of only two in the whole of Essex. Parents campaigned tirelessly for the opening of this school and now feel themselves disadvantaged by geography.*" The last point identifies an unfortunate situation, but one that is not relevant to my consideration; demographic patterns change, as does the demand for places in particular schools, and parents cannot assume that admission arrangements will always work to their benefit, irrespective of any previous connection they may have had with, or contribution they may have made to, a specific school. I note, however, that siblings are given high priority in the school's arrangements, being allocated almost one third of the available places (49 out of 150) for September 2016, and that this priority will continue to advantage for some years applicants from St Peter's equally with applicants from other primary schools where there is a sibling already at Becket Keys. For parents who were most active in the founding of Becket Keys School, the provision of "Founders' places", as a higher priority even than siblings, confers another potential priority in the allocation of places.

22. In defending its change to the arrangements, the school supplied data covering applications for, and allocations of, places in the admission rounds of 2014-15, 2015-16 and 2016-17 as shown in the table below:

<b>2016/17</b>					
<b>Primary School</b>	<b>No. Applicants (inc. all choices 1st - 6th)</b>	<b>Offered Places</b>	<b>Faith</b>	<b>Non-Faith (inc. siblings, LAC, SEN, Medical)</b>	<b>Waiting List</b>
St Peter's CE (VA) Primary, South Weald	36	15	10	5	5
St Thomas of Canterbury CE (Aided) Junior	70	49	18	31	0
Bentley St Paul's CE (VA) Primary School	27	10	3	7	1
Shenfield St Mary's CE Primary School	40	5	1	4	2
Larchwood Primary School	18	13	0	13	4
<b>2015/16</b>					
<b>Primary School</b>	<b>No. Applicants (inc. all choices 1st - 6th)</b>	<b>Offered Places</b>	<b>Faith</b>	<b>Non-Faith (inc. siblings, LAC, SEN, Medical)</b>	<b>Waiting List</b>
St Peter's CE (VA) Primary, South Weald	43	22	15	7	9
St Thomas of Canterbury CE (Aided) Junior	65	34	11	23	1
Bentley St Paul's CE (VA) Primary School	28	12	6	6	0
Shenfield St Mary's CE Primary School	38	3	1	2	3
Larchwood Primary School	12	6	1	5	1
<b>2014/15</b>					
<b>Primary School</b>	<b>No. Applicants (inc. all choices 1st - 6th)</b>	<b>No. places offered</b>	<b>Faith</b>	<b>Non-Faith (inc. siblings, LAC, SEN, Medical)</b>	<b>Waiting List</b>
St Peter's CE (VA) Primary, South Weald	43	20	6	14	18
St Thomas of Canterbury CE (Aided) Junior	68	40	17	23	9
Bentley St Paul's CE (VA) Primary School	19	4	1	3	7
Shenfield St Mary's CE Primary School	47	12	4	8	8
Larchwood Primary School	20	9	1	8	3

The school's comment on these data is that *"this year, only 6 pupils from St Mary's gained a place and for the 2015/16 entry it was only 3.*

*In future years with a growing number of siblings and ‘distance’ being the tie breaker, this number is unlikely to increase and will probably reduce. It is also interesting to note that of the original 40 applicants from Shenfield St Mary’s, 35 did not gain a place, but only 2 went onto the BKS waiting list. It is reasonable to assume that the majority of the other 35 [sic] gained a place at a school that was a higher preference and almost certainly a great deal closer.”* That final assumption may or may not be true, as parents will have a variety of reasons for seeking or not seeking a waiting-list place for their child, but it is beyond doubt that the number of successful applications from Shenfield St Mary’s has been quite low under the “non-faith” or “other” criterion in the previous arrangements. This, however, does not necessarily support the admission authority’s argument for the change in the arrangements: it cannot argue on the one hand that pupils from Shenfield St Mary’s are taking places to which pupils from St Peter’s have – in its view – a better claim, but then also argue that the change would be no hardship for pupils at Shenfield St Mary’s because very few are allocated places anyway.

23. Apart from the self-evident faith link, the admission authority made no comment at all in response to the objection as to the nature of any specific curricular and/or pastoral links with the two named feeder schools. The document announcing the decision to change the arrangements, published on the school’s website, also made no reference to any such links – indeed, it gave no rationale for the change at all – and neither does the admissions policy for 2107-18, which, as noted above, merely states that the school “*came into being due to the ‘vision’ of the head teachers of St Thomas’ and St Peter’s Schools. Without their dedication and hard work coupled with the support of their whole school communities, Becket Keys would not exist. It is for this reason that students from these schools are given priority as detailed ...*”. I do not doubt what was achieved by the “vision” and drive described here, or the integrity of that “vision”, but I do not consider it reasonable grounds for according these schools priority status as feeder schools, least of all when no justification on pedagogic grounds is offered and where there is – as the diocese has indicated – no faith-based justification for their selection rather than any other Church of England primary schools.
24. In one of its responses to the objection, the school commented that the provision of faith places remains unchanged, noting also that St Mary’s Shenfield is a named church on the SIF and that, since the school opened, all applications on behalf of children whose parents attend this church and meet the attendance criteria have been successful. To this comment, the objector replied, “*This is not pertinent as it plays no part in the objection lodged.*” However, to my mind the reference to faith places draws attention to what is perhaps the most pertinent issue in my determination. I have shown that: there is no overwhelming argument to support the naming of the feeder schools based on distance and the availability of, or access to, other schools; the named schools are not the only schools of their type that might reasonably be considered as feeders; and that the school has provided no evidence of

strong curricular or pastoral links with the named schools. Consequently, I do not believe there to be any justification for naming two faith schools as priority (or feeder) schools in the allocation of non-faith places. The two schools both give priority on the basis of faith as they are entitled to do. If children admitted to their primary school on the basis of faith then have priority for admission to the school by virtue of attending that primary school, it is hard to see how priority for any significant proportion of places is in reality being given to children who are from other faith backgrounds or from families where no faith is observed. A small number may receive priority as looked after or previously looked after children or on medical grounds and rather more as siblings. However, those siblings would have derived their own priority in turn from the circumstances of the older siblings.

25. If no children were offered places on the basis each of the first four criteria, then there would be 75 places available for allocation under criterion 6. The combined PAN of the two named feeder schools is 122. The actual number of places available for allocation under criterion 6 will in practice be less than 75, so it would be possible for all children admitted under this criterion to come from the two feeder schools with no other children who may live near the school being offered places. I recognise that – as the data provided illustrate - some children who attend these schools may well satisfy the faith-based criteria and be allocated places under criterion 5. In 2016, there were 28 such children. Other children who have attended the two feeder schools may gain places on the basis of sibling links or be looked after or previously looked after children. However, taking the available evidence into account I remain of the view that the naming of the two feeder primary schools may unduly restrict the scope for other local children to gain a place at the school. This is not reasonable.
26. I therefore uphold the objection, as I agree the change to the school's 2017 arrangements is unreasonable when tested against the general requirement of paragraph 1.8 of the Code and when set against the specific requirement regarding reasonableness in the naming of feeder schools as required by paragraph 1.15 of the Code.

### **Other matters**

27. Having looked at the arrangements as a whole, I brought two points to the attention of the admission authority. First, there is no mention in the arrangements of admitting children with an Education, Health and Care (EHC) plan that names the school, as well as those with a statement of special educational needs, a requirement set out in paragraph 1.6 of the Code. Second, the definition of looked after and previously looked after children in the arrangements is incomplete when set against paragraph 1.7 and footnotes 16-19 of the Code. When brought to its attention, the school agreed readily to update the wordings and references in the arrangements.
28. Finally, I noted that on the SIF a priest or minister, with an applicant's agreement, is invited to consult other members of the congregation in

order to confirm their judgement regarding a family's attendance at church. This may not comply with having regard to diocesan guidance (as required by paragraph 1.38 in the Code), and may not meet the requirement of paragraph 14 in the Code for arrangements to be "*fair, clear and objective*". The guidance recommended by the diocese is the Church of England Board of Education/National Society Advice to Diocesan Boards of Education on admissions to Church of England schools (June 2011) which states in paragraph B6 of Appendix 1, that regarding church attendance "*evidence may be sought from clergy.*" In response the school stated that the mention of consulting other members of the congregation was inserted with the very purpose of achieving fairness, clarity and objectivity, since evidence such as church duty rotas or registers provide a fairer picture than "*from the altar or at coffee afterwards!*" I take the point, but the wording on the SIF should make explicit to applicants that only proper records would be used for this purpose of verifying attendance patterns; otherwise, some might worry about questions regarding their attendance (and hence their faith commitment) being put to random members of the congregation with whom they might feel they have personal issues that could affect judgements and hence the chances of success for applications. I consider the collection of evidence from members of the congregation is not clear, objective or procedurally fair and hence does not comply with paragraph 1.8 of the Code

### **Summary of Findings**

29. I upheld the objection to the change in the school's arrangements because, for the reasons set out in detail above, I have argued that the naming of two feeder schools did not comply with the requirements of paragraphs 1.8 and 1.15 of the Code, in that it:

- lacked transparency in the absence of an educational rationale;
- was unreasonable in respect of the potential effect on applicants living near to the school;
- was unreasonable in naming just two from a number of local faith primary schools; and
- was confusing to name faith schools in the context of an oversubscription criterion that refers to the allocation of non-faith places.

30. I found also that some references and wordings in the arrangements, and on the SIF, were incomplete and inaccurate or potentially unclear. The admission authority has agreed to amend and clarify these as necessary.

### **Determination**

31. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2017 determined by The Becket Keys Church of England Free School Trust for Becket Keys Church of

England School, Brentwood, Essex.

32. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.
33. 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 within two months of the date of the determination.

Dated: 26 August 2016

Signed:

Schools Adjudicator: Andrew Bennett