



DETERMINATION

Case reference:	ADA2905
Referrer:	A group of parents
Admission Authority:	The governing body of St Luke's Primary School, Kingston upon Thames
Date of decision:	26 August 2015

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 determined by the governing body of St Luke's Primary School, Kingston upon Thames for September 2016.

The objection

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 group of parents about the admission arrangements (the arrangements) for St Luke's Primary School (the school), a Church of England foundation school for children aged 4 – 11 in Kingston, Surrey for September 2016. The local authority (LA) for the area is the Royal Borough of Kingston upon Thames and the diocese is the Diocese of Southwark (the diocese). The objection concerns the consultation that took place before changes were made to the arrangements for September 2016 and that the decision made is unfair to those who live further from the school.

Jurisdiction

2. This is a Church of England foundation school and the governing body of St Luke's School is the admission authority. The 2016 arrangements were determined on 17 March 2015 by the governing body. The objection was made on 23 June 2015, which was before the deadline for objections to be made about 2016 arrangements. I am satisfied that I have jurisdiction to consider these arrangements.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code). The documents I have considered in reaching my decision include:

- a. the objection and supporting documents;
- b. the school's responses to the objection and supporting documents;

- c. the LA's comments on the objection and supporting documents;
- d. the diocesan comments on the objection and supporting documents;
- e. the LA's composite prospectus for parents seeking admission to schools in the area in September 2015; and
- f. the minutes of the meeting of the school's governing body held on 17 March 2015 when the governing body determined the arrangements for 2016.

The objection

4. The objection is that the school did not comply with the consultation requirements set out in paragraph 1.44 of the Code when it changed its arrangements. The objectors assert that there was inadequate preparation; the consultation was insufficiently wide; concerns raised in the consultation were not addressed; a compromise proposal was rejected; the decision went against the majority of consultee views; and the decision is unfair on those who live further from the school and not consistent with the arguments used to support it.

Background

5. The school is a foundation school with a published admission number (PAN) of 30. In 2010 an additional class was admitted to assist with providing for an increasing number of primary age pupils in the area. In September 2015 there will be another additional class admitted and the PAN will be 60. For 2016 the PAN is 30. The school has a nursery with 52 part-time places.

6. The school is regularly oversubscribed and in recent years has received over 200 applications for the 30 available places in the Reception class. The last Ofsted inspection in 2007 judged the school to be outstanding.

7. For admissions in 2015 the oversubscription criteria were as follows:

- i. Looked after and previously looked after children
- ii. Exceptional medical or social needs
- iii. Children with a sibling in the school at the time of admission
- iv. Committed members of St Luke's Church living within 2 kilometres of the school
- v. Committed members of other Church of England churches living within 2 kilometres of the school
- vi. Committed members of other Christian denominations living within 2 kilometres of the school.
- vii. Other children by distance.

The definition in the arrangements of “committed member” was attendance at church for a minimum of twice a month for a period of a year.

8. These arrangements were changed for 2016 admissions by deleting criteria iv, v and vi so that the oversubscription criteria are reduced as follows:

- i. Looked after and previously looked after children.
- ii. Exceptional medical or social needs.
- iii. Children with a sibling in the school at the time of admission.
- iv. Other children by distance.

9. The objection refers to the process followed in making this change. I have set out the timeline of meetings and communications for information below.

10. The governors met on 3 December 2014 and, following discussion, decided to consult on a change to the admissions arrangements. This followed a suggestion made by the local parish vicar who is an ex officio foundation governor. The vicar suggested that the governing body should consider removing the priority that it gave to those who attend church. There were two reasons for this, the first was so that the school could serve its local community better and the second reason was because of a concern that some of those who attended church for the year in order to qualify for a church member admission to the school for their child stopped attending church once a place had been allocated.

11. Parents received a letter on 15 December 2014 from the parish vicar explaining these thoughts and saying that a consultation would be carried out early in the New Year.

12. On 19 December 2014 parents received a consultation document from the school with a proposed new admissions policy, which deleted the three church membership criteria from the arrangements.

13. On 6 January 2015 the headteacher wrote to parents to explain more about the proposal and reassured parents that this would not change the Christian ethos of the school.

14. On 16 January 2015, some parents set up an online survey and the class representatives in each of the year groups distributed the link to the survey to parents at the school. There were 95 responses. The survey did not ask respondents to identify themselves.

15. On 29 January 2015, there was a public meeting. The objectors complain that minutes of this meeting were not published until the matter was put before governors for decision in March. They argue that, as a result, parents who were not there could not take account of anything said before they responded to the consultation.

16. On 4 February 2015 the chair of governors wrote to parents to say that the online survey was anonymous and so governors could not take full account of

it. She invited parents to send their comments using the consultation route established by the governing body. She said that governors did not have sufficient time or resources to respond to all parents individually. She reassured parents about maintaining the Christian ethos of the school.

17. The consultation was extended to 27 February 2015. This was announced on the school website. The consultation period was therefore 19 December – 27 February 2015.

18. The governing body met to determine the arrangements on 17 March 2015.

19. On 13 April 2015 the chair of governors wrote to parents saying what had been decided and saying that a fuller explanation would follow.

20. After the next governing body meeting on 27 April 2015, a report explaining the decision and giving background documents was published on 30 April and made available to parents.

Consideration of Factors

21. The Code sets out the requirements for consultation in respect of admission arrangements. The relevant paragraphs for this case are 1.43 and 1.44. Paragraph 1.43 says "*for admission arrangements determined in 2015 for entry in September 2016, consultation **must** be for a minimum of eight weeks and **must** be completed by 1 March 2015.*" Paragraph 1.44 says "*admission authorities **must** consult with:*

- *parents of children between the ages of two and eighteen;*
- *other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admissions;*
- *all other admission authorities within the relevant area (except that primary schools need not consult secondary schools);*
- *whichever of the governing body and the local authority were not the admission authority;*
- *any adjoining neighbouring local authorities where the admission authority is the local authority; and*
- *in the case schools designated with a religious character, the body or person representing the religion a religious denomination."*

22. I shall consider the points made by the objectors, the school and other parties and then refer to the Code. The first point made by the objectors is that the governing body did not spend sufficient time considering this matter before it went to parents for consultation. The admissions policy was presented to the governing body on 3 December 2014 and no significant changes were proposed by the committee. The proposed change came from the discussion that took place at that meeting and the suggestion made by the local vicar. The objectors are unclear whether or not a vote was taken on the proposal to consult.

23. The school responded to this part of the objection by saying that a full discussion of the proposal to consult took place before a vote was taken. It

went on to say that there is no requirement in the Code for governors to have previously discussed possible changes, and the issue of consultation, prior to such a vote taking place. The objectors refer to the Governors Handbook that is published by the Department for Education (DfE) and its guidance on how governing bodies should operate. They say that this document says that it is a requirement for governors to consider the views of parents and that the governing body should have held some form of pre-consultation discussions before launching a consultation. The governing body rejects this point and says that the handbook refers to general duties such as parental surveys, parent council and end of year questionnaires. The Code is specifically about the consultation concerning admissions arrangements.

24. The objectors then say that the governing body failed to follow the requirement of paragraph 1.38 of the Code that requires it to consult with the diocese before going to public consultation. The school responded that it did this by way of a telephone call from the vicar to the diocesan representative. This is confirmed by the diocesan representative who said that the local vicar telephoned her about the proposal following the governing body meeting and that the diocese then received a copy of the consultation on 19 December 2014. The diocese responded to the consultation on 28 January 2015.

25. The objector then asserts that the governing body did not act collectively in this matter as it should have done and that the vicar alone acted as the advocate for this change while other governors remained "*neutral so that they could consider the matter afresh at the end of the consultation process*". This meant that the governors did not respond to points made by parents and the objectors think that insufficient information was made available to stakeholders to enable them to make informed comments about the proposal.

26. The governing body responded to this point by saying that the purpose of the consultation was to find out people's views on the proposal. The same comment applied to the public meeting, governors were there to listen to views that were expressed. The decision to consult had been made and it was for others then to comment on the issues raised in the consultation and for governors to listen carefully. The governing body was under no obligation to respond to each of the consultation comments; its task was to take account of the views expressed when it came to make a decision on the matter.

27. The next point made by the objectors was that the consultation letter was insufficient and did not contain enough information. The school responded that the consultation documentation set out the proposal to remove the faith-related admission criteria from the arrangements and gave the reasons for this proposal.

28. The objectors then questioned who was consulted. The school responded that it had consulted the parties required by the Code. The proposed policy was sent to "*the diocese, the LA, all school headteachers, all school chairs of governors in the borough and it was also placed on the school's website. Details of the consultation were published in local newspapers, playgroups, the pharmacy, GP surgery and via a local residents group and social media.*" The consultation was not sent to other local churches. The vicar also raised the proposal for discussion at a Deanery chapter meeting.

29. A further part of the objection is that the governing body had said that it could not include the anonymous responses from the parental survey that parents had undertaken within the parents' consultation. These were survey responses that had been collected by a web survey initiated by some parents. There were 95 responses with 61 per cent (58 respondents) against the proposal, 35 per cent (33 respondents) in favour and 4 per cent (4 respondents) as "don't knows". 60 respondents included further comments or questions and these were shared with the governing body. The governing body said that it could not add the responses to its own set of responses because the responses were anonymous and could have been contributed by anyone or one person could have made multiple responses. The chair of governors did write to parents to say that if they wished to contribute then they should respond directly to the clerk by email in order that their response could be taken fully into account. The school said that the online responses were considered when the governing body met to consider consultation responses, but in the knowledge that they were anonymous.

30. The objectors commented that the comments made at the public meeting were effectively anonymous because speakers did not give the names. The school said that this was not the case because there was an attendance list and there was not the same potential for one person to make multiple responses as there could have been online.

31. The objectors conclude this part of the objection by saying that paragraph 1.44 of the Code was not complied with because the school did not consult properly with all the parties that are required in this paragraph. The school responded by saying that it had followed the Code and had consulted with all those with whom it was required to consult under this paragraph. It also refuted the argument that it had not consulted about the changes with the diocese before going to consultation and said that it believed that it had complied with paragraph 1.38 of the Code that requires it to consult with the diocese before going to consultation.

32. The LA confirmed that it had been consulted and that the consultation was within the required timescales. I shall refer to the LA's response to the consultation below.

33. In a further point the objectors said that they were concerned that with fewer children attending church the Christian ethos to school would be diminished. The school disagrees with this and says that this is already the case, as some parents appear to attend church in order to gain a place and then stop attending church once a place at the school has been achieved, so it could be argued that this point is not relevant. Both the headteacher and the chair of governors refer to the commitment to remain as a church school and say that the school will continue to work with the local churches.

34. Lastly, the objectors argue that if distance is used as the oversubscription criterion, that the school will be filled with children who live within a few hundred metres of the school. They say that the result will be that instead of serving the local community, the school will simply serve those parents who can afford to buy or rent expensive properties close to the school.

35. In contrast, the LA said that it had responded positively to the consultation as the proposed changes were perceived to make the admissions more inclusive and open to all members of the local community. The governing body responded that *“it was aware of all aspects of the school demographic and had regard to the school evaluation form which demonstrates a very low proportion of pupil premium pupils at intake and a lack of diversity.”*

36. The table below shows the admission pattern for the last three years as published by the LA in its composite prospectus. After siblings have been admitted, all the applicants have been those living within two kilometres of the school.

	2012	2013	2014
Number of applications	237	221	274
Looked after and previously looked after children	0	0	0
Exceptional family, social or medical need	0	1	1
siblings	15	10	15
Committed members of St Luke’s Church within 2 kms	13	10	9
Committed members of other C of E churches within 2 kms	2	8	5
Committed members of other Christian denominations within 2 kms	0	1	0
Other children by distance	0	0	0

37. The objectors then go on to say that *“as they understand it, governing bodies exercising a public function must take account of all relevant factors and make a decision within the range of decisions which the body could reasonably make.”* They argue that when the governing body heard the vicar’s suggestion it should have considered a range of responses to it and gone out to consultation on these rather than just one way forward.

38. The school does not accept this point and said that the governing body did consider consulting on a mix of open and foundation places but rejected this in favour of the simpler option. The diocese had responded to the proposal by saying in its consultation response that *“the removal of the church criteria is obviously a big change and.....the Board's preferred model for admissions is a foundation and open place policy in which a proportion of places is offered to church families and a proportion to non-church families. However, we do not rule out other models to determine admissions.”* During the consultation some parents proposed a similar compromise but the governing body rejected it when it determined the arrangements on the grounds that it would cause more problems than it solved.

39. The objectors then point out that the governing body appears to have misinterpreted the diocesan advice it received because in the governing body's explanation of its decision it made reference to the diocesan comment that schools should be offering places to those of "different faith or none". The objectors suggest that this has been taken out of the wider context of the diocesan advice that asked the governing body to consider the "...*type of school community it wishes to create and emphasised the duty to promote community cohesion...*". The school responded by saying that it had considered the diocesan advice carefully and that it was its judgment that it would serve the local community better if it changed the arrangements. It had chosen to "*balance the needs of Christian children, those of other faiths and none who lived in the area. Christian families who live in the North Kingston area have the options of sending their children to a number of faith schools including a new free school that will open in September 2015.*"

40. In coming to my own view on the matters raised I have referred back to the Code. This is statutory guidance and the Governors' Handbook referred to by the objectors is subordinate to the Code in these matters. The first point I considered was whether the governing body had followed requirements of paragraph 1.38 of the Code to consult with the diocese before consultation and to have regard to diocesan advice. The governing body met on 3 December and it was at this meeting that it discussed going to consultation on a proposal. The matter had not been discussed prior to this meeting but the governing body and the diocese confirm that following the meeting there was a discussion about the proposal with the diocese which both parties agree complied with the consultation requirement in paragraph 1.38 of the Code. The Code requires this diocesan consultation to take place before a wider consultation begins and I am satisfied that this element of the consultation process complies with a Code. The objectors assert that the governing body should have carried out a pre-consultation with parents before deciding to consult on a proposal. There is no requirement for this to be carried out within the Code.

41. Paragraph 1.44 of the Code sets out whom an admission authority **must** consult with about admissions. The first requirement is to consult with parents of children between the ages of two and eighteen. The school describes how it wrote to parents at the school and then used the school's website, local media and leaflets at community venues together with a letter sent to the headteachers of all the primary schools in the borough to try and reach as wide a group of parents as it could. I am satisfied that the school took reasonable steps to communicate with this group as required. I am also satisfied that the school consulted with the other groups that this paragraph of the Code requires it to do. The objectors consider that the school should have spoken to the leaders of other churches in the area concerning this proposal. The governing body describes how this was done at a meeting of the local church leaders on 5 March 2015. Overall therefore I am satisfied that the school met the requirements set out in paragraph 1.44 of the Code.

42. The next part of the objection concerns the process used by the governing body to come to a decision to change the admission arrangements for 2016. The objectors are concerned that the governing body did not consider the range of options open to it and did not consult on the range of options that

were possible. They are then concerned that the governing body did not answer questions and engage in sufficient dialogue with consultees during the consultation process and asserts that the governing body did not give enough consideration to the consultation responses when it made its decision about admission arrangements for 2016.

43. The governing body has provided an account of its process and it is clear that it did consider the possibility of a mix of foundation and open places before the consultation, but decided not to follow this because it thought that it would complicate the arrangements. The governing body made a conscious decision to consult on one proposal and not to offer a range of different options. As the decision-maker it is the governing body's prerogative to do this. The diocese's response to the objection said that "*the Board's guidance makes clear that the final decision on the admission arrangements is a matter for the governing body to decide in the light of local circumstances and after consultation with all interested parties. It is for the governing body to weigh up how their admission arrangements reflect their mission to serve their community is reflected in both diocesan guidance and the National Society's June 2011 guidance (paragraphs 34- 27). This is the process which the governing body followed as it is required to do under the admissions Code.*"

44. Governing body is criticised for not engaging in discussion during the consultation process. The governing body considered that its role was to listen to comments rather than to engage in debate. Following receipt of the online survey comments, the chair of governors wrote to parents and requested that if they had views and opinions that they send them to the clerk of the governors by email or other means. I note that the governing body did include the online responses in its report and considered these alongside other responses before it made its decision.

45. The objectors also criticised the governing body for the way the public meeting was carried out. In their view the governing body should have engaged in dialogue and discussion with those present. The governing body said that the meeting was to provide anyone with an interest in the proposal to express their view about it directly to the governing body as an alternative to responding in writing. It said that there is no requirement in the Code for the governing body to hold a public meeting. I am satisfied that in observing that some parents were opposed to the proposed change, the governing body behaved properly in providing opportunities for interested parties to submit their views before a decision was made.

46. The governing body is criticised for not producing the notes of the public meeting and circulating them before the end of the consultation. There was no requirement for the governing body to produce the notes of the public meeting so that parents who could not attend could be informed. It is not a requirement through the Code to circulate notes of any public meeting and the important point is that the notes were available for the governing body members to consider prior to making its decision.

47. The governing body received the responses to the consultation and the notes of the public meeting and it is clear that it used these to inform its decision-making. Having consulted it is the responsibility of the decision-

maker to consider all the responses. The governing body produced a report after its meeting, which set out the points that it had taken into account and the way that it made its decision. I am satisfied that this report demonstrates how the decision-making process took account of comments made and its reasons for how the final decision was made. The governing body had the responsibility and the authority to make this decision and, even if a significant number of consultees had different opinions, this does not change the ultimate responsibility of the governing body to make the decision and in doing so to take into account all the views and opinions expressed in the consultation. The diocesan response quoted above makes a similar point.

48. Having drawn attention to the consultation and the decision-making process, the objectors make the final point that if distance is used as an oversubscription criterion then it is likely that there will be a relatively small distance around the school from which children are drawn and that this will have two consequences. The first is that the mix of children in the school will not reflect its local community and the second is that some Christian children will be disadvantaged because they will not be able to attend this church school.

49. The governing body has taken the view that the local community is the area around the school and that if this is the area that it should serve then distance becomes a logical oversubscription criterion. It pointed out that its current profile does not match the local community very well and so the change could be a step towards addressing this. It understands the concerns of Christian families who live further away who may not now be able to obtain a place at the school for their child. The governing body points out that there are other faith schools in the area including the likelihood of a new one opening in September 2015 in the area. I am satisfied that the use of distance is a fair criterion to use and is easily understood by parents.

Conclusion

50. I have looked carefully at the submissions made by the objectors, the school, the diocese and the LA. I have also considered the relevant paragraphs in the Code. The objection concerns the process used by the governing body to make a decision to change the admission arrangements for 2016. I have reviewed all the information that has been provided to me and I have concluded the governing body met the requirements of the Code in reaching its decision. I do not uphold this part of the objection.

51. The objection suggests that the outcome of the changes will mean that parents who live further from the school could be disadvantaged. The governing body has taken the view that it wishes to use distance as its oversubscription criterion. It has decided that this would be fair and there is no requirement in the Code for arrangements to enable those from further away to have priority for a place. I do not uphold this part of the objection. By the use of distance the governing body is more likely to have a criterion that allows those who live close to the school to gain a place and who are thus, by definition the local community.

52. Overall I have concluded that the arrangements as determined by the

governing body do not contravene the Code. I do not uphold this objection. The governing body is the appointed decision-maker and in my view has been through the process set out in the Code in making the decision.

Determination

47. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the governing body of St Luke's Primary School, Kingston upon Thames for September 2016.

Dated: 26 August 2015

Signed:

Schools Adjudicator: David Lennard Jones