



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3482

Objector: A member of the public

Admission Authority: The Governing Body of St Saviour's Church of England Primary School, Lambeth

Date of decision: 3 October 2018

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 September 2019 determined by the Governing Board for St Saviour's Church of England Primary School, Lambeth.

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 a member of the public, the objector, about the admission arrangements (the arrangements) for St Saviour's Church of England Primary School (the school), a voluntary aided school maintained by Lambeth London Borough Council, for September 2019. The objection is to the change in the ratio of foundation to open Places from 24:6 to 22:8 and is made on the basis that the consultation was not sufficient in respect of this change, or at all.

2. The local authority for the area in which the school is located is Lambeth London Borough Council (the local authority). The local authority is a party to this objection. Other parties to the objection are the Governing Board of the school (the GB) and the objector.

Jurisdiction

3. These arrangements were determined under section 88C of the Act by the GB which is the admission authority for the school. The objector has referred to the history behind the determination of these arrangements in some detail. I have looked at all the submissions on this point and I am satisfied that the arrangements (which are set out below) were determined by the GB on 26 February 2018, if not before, prior to the deadline of 28 February 2018 set out in paragraph 1.46 of the School Admissions Code (the Code).
4. The objector submitted his objection to these determined arrangements on 15 May 2018. 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

5. In considering this matter I have had regard to all relevant legislation and the School Admissions Code.
6. The documents I have considered in reaching my decision include:
 - a. the objector's form of objection dated 15 May 2018;
 - b. the response of Southwark Diocesan Board of Education (SDBE), which is the religious authority for the school, to the objection and supporting documents;
 - c. the governing board's response to the objection and supporting documents;
 - d. the local authority's response to the objection and supporting documents;
 - e. the further comments and submissions from the objector;
 - f. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2018;
 - g. maps of the area;
 - h. confirmation of when consultation on the arrangements last took place;
 - i. copies of the minutes of the meeting of the governing board at

which the arrangements were determined; and

- j. a copy of the determined arrangements.

The Objection

7. The objection is set out in some detail by the objector. I find that in essence his objection is to the process followed for the introduction of “*new changes*”. This is a reference to the changes made to the ratio of foundation to open places, from 24:6 to 22:8 respectively. The objector summarises his position as follows “*I believe it has been unfair and unreasonable for the Governors to make ‘new changes’ to the admission arrangements after the consultation, to offer only the [Parochial Church Council] an opportunity to comment on them, and then to go ahead and make the ‘new changes’ after a series of process errors*”. I will consider the detail of these points below.
8. I find that the objection is not that the changes (including the “*new changes*”) made to the arrangements are in themselves in breach of provisions of the Code (although I consider this point below) but rather that the process followed in determining arrangements which incorporate those changes was flawed.

Other Matters

9. In reviewing the arrangements I noted that the following provisions may be in breach of the requirements relating to admissions.
10. Paragraphs 14 and 1.8 of the School Admissions Code 2014 (the Code) require that admissions arrangements and oversubscription criteria are clear. I have considered the following points:
 - a. Whether criterion 1 under “Foundation Places” (looked after and previously looked after children) requires some form of worship by parents and/or carers and, if so, what. This is set out for criteria 2 to 5 but not for criterion 1;
 - b. What happens to unfilled foundation places? Do they cascade down to open places?; and
 - c. The references in the arrangements to a “Minister’s letter”, which may not be clear.
11. The drawing of lots as a tie breaker amounts to a degree of random allocation and as such falls under paragraph 1.35 of the Code which reads “*The random allocation process **must** be supervised by someone independent of the school...*”.

Background

12. The school is a voluntary aided, Church of England primary school for boys and girls aged 5 to 11, situated in the London Borough of

Lambeth. The school has a published admission number (PAN) of 30, meaning that it admits up to 30 pupils to its reception class each year. The school was inspected by Ofsted in 2013 and judged to be “*inadequate*” and so to require special measures, and remained in that category until a further Ofsted inspection in April 2015 (report published May 2015) judged the school to be “*good*”.

13. The school is located in the parish of Herne Hill, a parish with two Church of England churches, St Saviour’s, which shares a site with the school, and St Paul’s which is located in the north of the parish.
14. The school has not been full in recent years. Full, in this context, being 7 classes with 30 children in each class, so 210 pupils. I am informed and I accept that the roll in June 2018 was between 190 and 192 pupils. In recent years the school has not admitted 30 pupils to its Reception class. However the data shows that the number of preferences expressed by parents for the school has increased. For entry in September 2017 a total of 60 preferences were expressed for the school. I note that in Lambeth parents may express up to six preferences and so many of those expressing a preference for the school will be offered places at other, higher preference, schools. The total number of first preferences expressed for the school was 17. For entry in September 2018 a total of 80 preferences were expressed, of which 27 were first preferences. In September 2018 the school admitted 30 pupils and so reached its PAN. As at 2 October 2018 there are three children on the waiting list for the school, all of whom applied for open places.
15. Over the last 10 years, including 2018, the school has admitted fewer pupils to foundation places than the maximum of 24 available. In 2017 and 2018 nineteen foundation places were offered, short of both the maximum number of 24 determined for those years and the 22 determined for 2019. In 2018 two pupils offered foundation places dropped out and those places were filled by one pupil qualifying for a foundation place who had recently moved into the area and one pupil who secured a place as an open place. Another foundation place pupil will be leaving at half term, so 17 pupils admitted to a foundation place will be left in the Reception class. It follows that every pupil whose parents applied for a foundation place, who did not gain a place at a higher preference school, was admitted. The number of children in each year group in the school in the summer term 2018, who were admitted to foundation places, averages just over 17, the highest being 21 and the lowest 12.
16. The objector has suggested that I request the “*source data*” for the numbers provided by the school and the local authority. As no evidence has been presented to suggest that the data which I have received and which is reflected here is inaccurate I have not considered this to be necessary.
17. Paragraph 1.42 of the Code requires that an admission authority

consults on its admission arrangements at least once every seven years, whether or not the arrangements have changed. The previous consultation was carried out seven years ago and so the admission authority was due to carry out a further consultation. In addition the admission authority decided to consult on some changes to the arrangements. The consultation ran from 30 November 2017 to 11 January 2018. This is in accordance with the requirements in the Code as to timing and duration of such consultations.

18. I set out below a copy of the admission arrangements showing the arrangements as determined for 2019 with the wording previously included, but omitted for 2019, in square brackets and highlighted in bold print.

FOUNDATION PLACES (22 [24] places available)

Criterion 1 - Looked after children and previously looked after children (note 2)

Criterion 2 - Children who worship with their parent(s) or carer(s) faithfully and regularly at the churches of St Saviour's or St Paul's in the parish of Herne Hill [and who live in the parish or for whom this is the nearest Church of England school,] and who have a brother or sister already attending St Saviour's school at the time of entry (note 3).

Criterion 3 - Children who worship with their parent(s) or carer(s) faithfully and regularly at the churches of St Saviour's or St Paul's in the parish of Herne Hill [and who live in the parish or for whom this is the nearest Church of England school.]

Criterion 4 - Children who worship with their parent(s) or carer(s), faithfully and regularly at another Trinitarian Christian Church which is a full member of Churches Together in Britain and Ireland or the Evangelical Alliance, and for whom this is the nearest Church of England school, and who have a brother or sister already attending St Saviour's school at the time of entry (note 3).

Criterion 5 - Children who worship with their parent(s) or carer(s), faithfully and regularly at another Trinitarian Christian Church which is a full member of Churches Together in Britain and Ireland or the Evangelical Alliance, and for whom this is the nearest Church of England school.

OPEN PLACES (8 [6] places available)

Criterion 6 - Looked after children and previously looked after children (note 2).

Criterion 7 - Children with an exceptional and professionally supported medical or social need for a place at this School (note 4).

Criterion 8 - Children who, at the time of entry (see note 3a), have a sister or brother still attending the school (note 3b).

Criterion 9 - Children in order of nearness of the home to the school (note 8).

19. Two elements of the arrangements have been changed:
- a. The removal from criterion 2 and 3 of provision that those meeting the criterion must live in the parish or that the school should be their nearest Church of England school; and
 - b. The change of the ratio of Foundation places to Open places from 24:6 previously to 22:8 for 2019.

Consideration of Case

20. I will first consider whether the changes made comply with the provisions of the Code and admissions law, regardless at this point of any flaws there may have been in the consultation (which I consider below).
21. There is nothing in the Code that requires admission arrangements to include provisions relating to place of residence or relating to proximity to other schools.
22. Paragraph 14 of the Code states that “*admission authorities must ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective*” and paragraph 1.8 states that “*oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation*”. I do not find any lack of clarity or objectivity in the aspects of the arrangements which concern the objector, nor have any such issues been suggested to me. I have gone on to consider whether the arrangements are fair. In the light of the objector’s concern about the overall fairness of the arrangements as they have been changed for 2019, I have tested them against the relevant provisions of the Code.
23. It is for admission authorities to formulate their admission arrangements subject to the Code and admissions law. The provision that arrangements must be fair requires me to consider whether any group of potential applicants to the school are disadvantaged unfairly. I should state here that I am considering potentially disadvantaged groups generally under the provisions of paragraph 14. I do not find that the reference to disadvantage to “*a child from a particular social or racial group, or a child with a disability or special educational needs*” in paragraph 1.8 of the Code is engaged in this determination and there is no suggestion that such disadvantage arises. The removal from criterion 2 and 3 of provision that those meeting the criterion must live in the parish or that the school should be their nearest Church of

England school would have a potential effect on those admitted, provided the school is oversubscribed.

24. The relevant part of the oversubscription criteria in essence set out two separate groups of potential applicants (after Criterion 1: looked after and previously looked after children) who may qualify for a Foundation place. These are (in summary form):
- a. Those who worship at St Saviour's or at St Paul's
 - b. Those who worship elsewhere (in one of a specified set of churches)

Within each group those who have a sibling at the school have priority over those who do not. In addition for those in group b to qualify for a foundation place the school must be their nearest Church of England school.

25. Foundation places are available to worshipers at the two Church of England churches within the parish and to those who worship in other churches within the same broad group. It is somewhat anomalous that the additional requirement for the school to be the nearest Church of England school applies only to group **b**, but, for reasons that will be set out below, this arose due to an error in the consultation. I do not find that that these arrangements are unfair in themselves.
26. The objector contends that the changes have unfairly disadvantaged some potential applicants. Previously those in group **a** also had to live in the parish or the school had to be their nearest Church of England school. The effect of the change is to increase the number of those potentially eligible to be in group **a**. Those who qualified for group **a** under the previous arrangements will also qualify under the new arrangements. So may some additional potential applicants, for example those who worship at St Saviour's or St Paul's but who live outside the parish. Therefore the number of applicants who qualify for group **a** may increase. Were that to happen so that the number of applicants within group **a** exceeded the number of foundation places available, then those applicants (after children with siblings at the school had been admitted) would be ranked by distance from the school. In those circumstances some applicants who lived outside the parish may live closer to the school than some who live within the parish. Were all these conditions to be met some applicants who would have gained a place previously would not do so under the new arrangements. The potential for this disadvantage to arise is increased by the reduction in the number of foundation places from 24 to 22. The changes were not introduced primarily to affect the actual intake to the school, but rather in the hope that the numbers making the school their highest priority and thus being admitted would increase. The changes seek to address a perception that the school was to some extent exclusively for those who meet the foundation criteria and so to encourage more applications for open places. This issue is considered

in the diocesan guidance quoted below.

27. The number of applications for places at the school is rising but not so much that there is any likelihood in the near future of the numbers expressing a first preference for a foundation place exceeding the 22 available in the arrangements for 2019 entry.
28. A number of conditions would have to occur before such disadvantage would arise. The number of children seeking a foundation place would have to exceed the number of such places available. Additionally, the number of first preference applicants meeting the criteria for group **a** alone would have to exceed the total number of foundation places available. I have not been offered evidence to suggest that there are large numbers of potential applicants who worship at St Saviour's or St Paul's but live outside the parish of Herne Hill. I find that it is unlikely that this disadvantage would arise in 2019 which is the only year for which I have jurisdiction. While I have no jurisdiction for later years and have not taken into account what might happen in later years, I can say that I have seen no evidence that disadvantage to those who worship at St Saviour's or St Paul's but live outside the parish would arise in later years. I do not find that the reduction in the number of foundation places available makes it significantly more likely that such disadvantage would arise.
29. The objector has referred to the provisions of paragraph 3.18 of the Code "*Admission authorities for schools designated as having a religious character **must** have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith-based admission arrangements*". The relevant body in this case is SDBE which publishes a document titled "*Admission and Appeal in Church of England Schools*".
30. On the question of the ratio of foundation and open places the guidance states:
- "2.9 It is worth repeating that The Dearing Report, referred to in Chapter, 1 supports the Board's position described above and expressed the view that:*
- The admission policy uniquely challenges a church school governing body to decide how to balance its wish to serve the community with its wish to nurture children from Christian homes in their faith. The decision to turn away practising Anglicans, or other Christians, from a Church of England school in order to take in other children who may have no faith, or practice another faith, is a difficult one. Church schools have been accused of exclusivity when they admit only church families, but may also be accused by the church of deliberately excluding church members in favour of non-Christian families.*
- 2.10 Church schools in this position undoubtedly face a dilemma, but there is also the question of how church schools are perceived by their*

communities. There are instances where non-church families are put off applying to their local church school because it is perceived that priority for admission is given to church attendees to the exclusion of all others, even if, in practice, this is not the case. Some families assume that they will not be given a place when in fact the school is not oversubscribed with church families. The foundation and open place policy therefore serves another purpose in stating publicly that applications are welcome from non-church families as well as church families, thereby fulfilling the church school's dual purpose."

31. A table following the paragraphs quoted above, reads "*Proportion of foundation and open places... This could be 50:50; 60:40 or any other combination, depending on local circumstances*". I do not consider it necessary to establish when or how the admission authority actually considered the provisions of this document. The current arrangements and those determined for 2019 do not fall outside this guidance and the school has put forward reasons for the change in ratio similar to those contemplated in paragraph 2.10 of the guidance. The SDBE have written to me (and copied to the other parties) that they are happy for admission authorities to make their own decisions based on their knowledge and experience of their school community. The SDBE support the change to the ratio. I find that the admission authority have complied with paragraph 1.38 of the Code.
32. Consequently I find that for the reasons set out above the 2019 arrangements are fair.

The consultation

33. The objector contends that the consultation was flawed in that:
- a. There was no consultation on change to the ratio of foundation to open places by reducing the number of foundation places by two and increasing in the number of open places by two.
 - b. The process followed in the consultation was flawed in a number of ways.
34. I will firstly summarise the consultation process. In order to consult the admission authority published a copy of the admission arrangements as they stood with marked deletions to show the proposed changes. These are the words that are highlighted in the text of the oversubscription criteria above, save that the document published for consultation contained no changes to the ratio of foundation to open places which were stated to be, as before, 24 and 6 respectively.
35. This document was accompanied by a short explanatory statement which read "*The main change to the policy is that applicants no longer have to live in the parish of Herne Hill, nor does this need to be their nearest church school to apply for a foundation place*". There was no indication that any change to the ratio of foundation to open places was

contemplated. Such a change had been considered prior to consultation and the admission authority had decided that such a change was not desirable and would not be a change consulted on.

36. As the quote above suggests, the admission authority had meant also to delete the words "*and for whom this is the nearest Church of England school*" from criteria 4 and 5. By mistake this was not done in the published document. When this omission came to light, after the close of the consultation, the decision was taken not to make this change as it had not been consulted on, and those words remain in the 2019 arrangements.
37. Following the consultation the admission authority determined arrangements which made the changes contemplated to criteria 2 and 3 and which changed the ratio of foundation to open places, as set out above.
38. The objector has also raised a number of specific points on the process followed by the admission authority in the consultation. He points out that a copy of the supplementary information form (SIF) was not included in the consultation, the admission authority accept that this should have been done. The objector states that the wording of the SIF has been changed. I have compared the current wording with the wording for 2019 and find that they are the same. The objector points out that no maps were included with the consultation. I do not consider this was essential. The only issue was the removal of the parish as a catchment area for criteria 2 and 3. I do not think this was unclear. The governing board accept that the consultation document contained errors but I find that none of the matters considered in this paragraph render it so flawed that the determined arrangements for 2019 should not stand.
39. The objector raises as an issue the fact that the governing board met the local Parochial Church Council after the closing date of the consultation and discussed with them proposed changes to the ratio of foundation to open places. I see no reason why they should not do so and I do not agree with the objector that this constituted unfair or improper consultation.

The change to the ratio of foundation to open places

40. I find that what was consulted on was the admission arrangements as a whole. No areas were identified as "*areas on which comments are not sought*" (paragraph 1.45 of the Code) It is only mandatory to identify such areas where such areas exist. The consultation not only addressed proposed changes but also the requirement to consult on the arrangements as a whole at least every seven years. I find that the consultation allowed for responses on any aspect of the arrangements.
41. However, any reasonable person looking at the consultation would assume that no changes were proposed to the ratio of foundation to

open places. This was not flagged up in the published copy of the arrangements nor in the accompanying text. The reason it was not, at the time of publishing the consultation the admission authority had no desire or intention to change the ratio. It follows that the admission authority did publish the full admissions arrangements as proposed at that time, in compliance with the requirement to do so set out in paragraph 1.45 of the Code.

42. The consulting admission authority is not obliged to set out every possible change to arrangements. It may set out the changes that it contemplates making. A consultation must be undertaken with an open mind, that is without ruling out making changes different to those proposed. This may mean deciding not to make all or any proposed changes or deciding to make changes that were not proposed. However, if changes are made that were not proposed in the consultation, those changes should not depart fundamentally from what was proposed, save in exceptional circumstances, for example, if what was proposed was unlawful or would have unexpected adverse consequences.
43. Only ten responses were received to the consultation. Of these I find that seven commented on the issue of the ratio of open to foundation places and wished to see a greater number of open places. This constitutes a fairly high proportion of the responses actually received but, as the objector has pointed out, a fairly low proportion of potential respondents. The objector reasonably says that more responses on the ratio issue might have been received had the consultation flagged this up as a proposed change.
44. As a result of the responses received the admission authority decided to change the ratio. The change is numerically minor and is unlikely, as stated above, to have any significant effect on admissions to foundation places. A balance has to be struck between the obligation to consult and the need for a decision to be taken determining arrangements for admissions in September 2019. As set out above I find the 2019 arrangements to be fair. I also find that it is unlikely that the responses would have been materially different had the consultation set out the change to the ratio, although I acknowledge that the objector may have himself responded on that point. However, he has been able to make an objection and I have been able to take into account all the issues raised by the objector in reaching the conclusions I set out in this determination. On balance I find that the changes made are not so fundamental that, having not been flagged up in the consultation, they cannot be allowed to stand.
45. I should also note that I do not consider that a finding that the consultation was so flawed that the determined arrangements cannot stand would serve any useful purpose. If the arrangements were to be changed at this point it is unlikely that the children actually admitted for September 2019 would be different. The admission authority could consult again for 2020 and could decide to make the changes then.

However, this process would put pressure on the resources of a school facing, like many others, significant financial pressure.

46. Overall I find that the determined arrangements for 2019 (save for the other matters set out below) are compliant with the provisions of the Code and the law on admissions.

Procedural issues

47. As well as the issues the objector raises regarding the consultation he also raises a series of procedural issues with the process followed by the governing body, leading up to the determination of the arrangements. These include meetings which he alleges were not properly clerked or were inquorate and a failure to publish minutes of meetings. As set out above I have found that the arrangements were properly determined. It is not part of my jurisdiction to look into procedural matters such as are raised by the objector and I make no findings on these points.

Other matters

48. In reviewing the arrangements I noted that the following provisions may be in breach of the requirements relating to admissions.
49. Paragraphs 14 and 1.8 of the School Admissions Code 2014 (the Code) require that admissions arrangements and oversubscription criteria respectively are clear. I have considered a number of points in this context in the following paragraphs.
50. Whether criterion 1 under “Foundation Places” (looked after and previously looked after children) requires some form of worship by parents and/or carers and, if so, what? This is set out for criteria 2 to 5 but not for 1. The admission authority have responded that all such children will be offered a place regardless of whether they apply for a foundation or an open place. This may be so but the position for applicants under criterion 1 regarding a SIF and requirements regarding worship need to be set out clearly. I find that the arrangements are not clear on this point.
51. What happens to unfilled foundation places? Do they cascade down to open places? The school have stated that unfilled places do cascade down but I find that the arrangements do not set this out expressly and are unclear on this point. The governing board had agreed to change the wording to clarify this point.
52. References to a “*Minister’s letter*”. This may be a reference to the Minister’s reference on the SIF form but this should be clear. The school acknowledge that this is unclear and again agreed to change the wording.

53. The drawing of lots as a tie breaker amounts to a degree of random allocation and as such may fall under paragraph 1.35 of the Code which reads “*The random allocation process **must** be supervised by someone independent of the school...*”. The school acknowledge that this does not comply with the provisions of the Code and again has agreed to change the wording.
54. The Code requires that the arrangements be amended in order to address the matters I have set out above. The school’s expressed willingness to make these changes is welcomed.

Determination

55. 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 admission authority for St Saviour’s Church of England School, Lambeth.
56. 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.
57. 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: 3 October 2018

Signed:

Schools Adjudicator: Tom Brooke