



DETERMINATION

Case reference:	ADA3182
Objector:	Telford and Wrekin Council
Admission Authority:	The governing body of St Matthew's Church of England (Aided) Primary School, Donnington, Telford and Wrekin
Date of decision:	7 September 2016

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 governing body of St Matthew's Church of England (Aided) Primary School, Telford and Wrekin.

I have also considered the arrangements in accordance with section 88I(5). I determine that there are matters as set out in this determination that do not conform with the requirements relating to admission arrangements.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its arrangements within two months of the date of this determination unless an alternative period is specified. In this case I determine that the arrangements must be revised within three months of the date of this determination.

The objection

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Office of the Schools Adjudicator (OSA) by the School Delivery Manager on behalf of Telford and Wrekin Council, (the objector), which is the local authority (LA) for the area. The objection concerns the admission arrangements (the arrangements) for September 2017 for St Matthew's Church of England (Aided) Primary School, Telford and Wrekin (the school), a voluntary aided school for children aged 3 -11. The objection is that in its admission arrangements, the school introduced a new oversubscription criterion that gives priority to children who attend the school nursery and that this criterion gives priority to all such children and not just those entitled to the early years pupil premium, the pupil premium or the service premium. The concern is also expressed that the school has removed the priority given to

children who live in the established catchment area from the arrangements.

2. The school is located in the area of Telford and Wrekin Council and within the Diocese of Lichfield. Both these bodies are parties to the case.

Jurisdiction

3. These arrangements were determined by the governing body of the school, which is the admission authority for the school, on the 10 December 2015. The objector submitted the objection to these determined arrangements on 11 May 2016.
4. 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 (the Code).
6. The documents I have considered in reaching my decision include:
 - a. the objection form dated 11 May 2016 and supporting documents together with subsequent comments;
 - b. comments from the school in response to the objection together with supporting documents;
 - c. comments from the diocese in response to the objection;
 - d. the LA's composite prospectus for parents seeking admission to schools in the area in September 2016;
 - e. a map showing the catchment area for the school for 2016 admissions;
 - f. a map showing the catchment areas for other schools in the area;
 - g. the minutes of the meeting of the school governing body on 10 December 2015 at which the arrangements for September 2017 were determined; and
 - h. a copy of the determined arrangements for 2017.

The Objection

7. The objection primarily concerns the oversubscription criterion in the school's admission arrangements that gives priority to those children who have attended the school nursery. The objector believes that this contravenes paragraphs 1.39A and 1.39B of the Code as it seeks to give priority to all children attending the school's nursery and not just those who are eligible for the early years pupil premium, the pupil premium or the service premium.
8. In its objection, the LA says that this criterion will potentially disadvantage local residents who choose not to send their children to the school nursery for whatever reason as well as disadvantage families who move into the area and who have not been able to register their children in time to gain a place at the nursery.
9. In addition to its objection about the new criterion relating to the nursery, the objector says that the effect of the new criterion is exacerbated by the fact that the school governing body has decided from September 2017 to stop using the established catchment area (referred to by the LA as an attendance area) that it has operated up until now. Instead the school will give priority in its oversubscription criteria to those who attend St Matthew's Church regularly. The LA is concerned that this could be unfair on local children who do not attend the church and who, when there was a catchment area would have had an expectation of obtaining a place at the school.

Other Matters

10. When I reviewed the arrangements as a whole in the course of considering the objection, I noted that there were other matters that did not comply with the Code and raised these with the school.
11. The first matter I raised was the consultation and decision making process. I asked for further information about how the consultation was conducted and how it was taken into account when determining the revised arrangements in order to comply with paragraphs 1.42 - 1.45 of the Code.
12. As a further point, I noted that the wording for the first criterion in the arrangements that refers to "*children in public care*" is not consistent with paragraph 1.7 of the Code which refers to looked after children and previously looked after children.
13. I also pointed out to the school that the arrangements do not contain a reference to the process for requesting admission out of a child's normal age group as required by paragraph 2.17 of the Code.

Background

14. The school is a Church of England voluntary aided school. It has a published admission number (PAN) of 40. In 2016 there were 79 applications for places of which 42 were first preferences. The school is located in the Donnington area of Telford. The LA reports that Telford is a town that is encouraging development with 1258 new homes completed during 2015 and another 15,000 are planned over the next 15 years.
15. If the number of preferences for the school exceeds the number of places available at the school in 2017, the following summarised oversubscription criteria will be applied:
- i. Looked after children and previously looked after children.
 - ii. Children whose families are regular worshippers (this means they have attended at least once a month for six months) at St Matthew's Church or having moved into their house within one month of their application for a school place can show that they were regular worshippers at another church.
 - iii. Children whose families are regular worshippers of any faith.
 - iv. Children who have a sibling in the school at the time of admission.
 - v. Children who attend St Matthew's Church of England Aided Primary school's nursery centre and have a place on the day of application.
 - vi. All other children.

If it is necessary to differentiate between applicants in any of these categories or if a tie breaker is required between two final applicants in any criterion, priority will be given to:

- i. Those with exceptional health reasons,
 - ii. Those eligible for the pupil premium or service premium,
 - iii. The applicant with the shortest straight line distance between home and school.
16. These arrangements have changed from those applied for 2016 when the oversubscription criteria gave priority to (in summary):
- i. Looked after children and previously looked after children.
 - ii. Children in the catchment area in priority order as follows:
 - a. Health and medical reasons
 - b. Siblings
 - c. Regular worshippers at St Matthew's

d. Other children in the area

iii. Children from out of the area in priority order as follows:

- a. Health
- b. Siblings
- c. Regular worshippers at St Matthew's
- d. Other children.

17. The school nursery has 64 part-time places and according to the 2016 admission policy, allocates the places by asking parents to complete a consideration for admission form in advance of a place being sought. The nursery then allocates places to children living in the Donnington Wood area and if places are available offers places to those living outside the area. The arrangements say that a child attending the nursery is not required to transfer to the school and that a parent who chooses to send their child to a different nursery will not be discriminated against when school places are allocated. There is no right of appeal if a parent believes that their application for a place for their child at the nursery has not been considered fairly.

18. The school had until it determined new arrangements for 2017 admissions a catchment area which is known locally as an attendance area and I am satisfied that the local attendance area is a catchment area within the meaning of paragraph 1.14 of the Code. The LA provided a map that showed how the local authority area is divided up into non-overlapping catchment areas so that each child has priority for admission at one local school. All schools have a catchment area, with the exception of five faith schools, four of which are Catholic and one Church of England.

Consideration of Case

19. The LA is the objector in this case and had been in correspondence with the school over its proposals to change its admission arrangements before this objection was made. The school informs me that it began to consider the change to its admission arrangements in September 2015. I was given the minutes of a meeting held that month where discussions took place about various aspects of the school's performance. The minutes do not detail discussions about admissions but the chair of governors advises me that this is when the formative discussions and research were undertaken and which led to the proposals for a change.

20. The chair of governors wrote in response to my enquiries "*the following areas formed the research and reasoning behind the changes to the admissions policy for St Matthews Primary:*

Attainment – The Governing body at St Matthews has carried out analysis of the performance data for children that attended St Matthew's Nursery and those that didn't. The difference in attainment can be as high as 35% in some subjects, with those who did not attend the nursery centre attaining considerably lower than those that did.

Admissions Policy for Nursery – The admissions policy for the Nursery is broadly in line with the admissions policy for school, with the over subscription policy being followed at each admission period and when any places become available outside of these times.

Removal of the catchment area – The decision to remove the catchment area was taken to benefit those families living in closer proximity to the school. This was because the school sits very close to the boundary of the current catchment area, and some families who live very close to the school were not able to gain a place in school. As we are a community focused school we felt that by removing the catchment area and basing the final oversubscription criteria on distance alone would benefit the local community more.

Distance from Nursery/School – Our school has always benefited the local community and almost all of our students come from the local vicinity and we have very few applications from outside the local area.

The overarching reason for making these changes is to improve outcomes for children within the local area. As Donnington is one of the 5% most deprived areas nationally, we take our responsibility to serve and improve the chances for our children very seriously and all of the evidence shows that those who attend our outstanding nursery provision will have more opportunities and better outcomes in their futures. The new admission policy will encourage families to place their children in this provision enabling us to offer excellent continuity and provide an excellent environment for learning that the children will take with them throughout their education.”

21. The chair of governors went on to say that *“there were disappointed parents whose children had spent up to two years in nursery, and who lived within one mile of the school that did then not get a place at school and the school wanted to give these children, often from deprived backgrounds, the best start in their educational journey.”*
22. The diocese provided me with a copy of its published guidance and said that it had not offered specific guidance to the school on the change to its admission arrangements. However, in general, if it was asked about giving priority to nursery children it always advised schools to remove this provision. The diocese commented that it thought many schools found the part of the Code concerned with priority for children who had attended a nursery linked to a school confusing and in conflict with other advice that schools receive about improving early years provision and providing continuity for children.
23. The LA said that it had drawn the school’s attention to the issue of the nursery priority and advised the school to consult with the diocese in a letter dated November 2015. It also commented on the possible effects of removing the attendance area; its concern was that a family who lived near the school (whether inside or outside the catchment area) would be unable

to obtain a place because they would have a lesser degree of priority than a family who lived further away but who attended the church. I note that the determined arrangements would indeed give any regular worshipper of any faith at any place of worship a higher priority than those who live in the former catchment area but do not attend worship. The school has up to now served the local area and this could now change as a result of the removal of the catchment area and the higher priority to be given to those who attend the church (or any other place of worship) regularly and the priority for those who have attended the nursery. The school had oversubscription criteria giving priority to those who attended St Matthew's Church regularly in its previous arrangements. However, these related only to those who attended this one specific church and even then the priority for those who attended the church but lived outside the catchment area was lower than for those living in the catchment area but not attending church.

24. The LA went on to say that it had not been asked by the school for any statistics on admissions to the school and admissions officers were not aware of a groundswell of opinion having been expressed about the current admissions policy at the school by members of the public. The LA figures for appeals for reception places over the past few years are shown below in the table.

Year	Number of appeals	In area	Out of area and distance from school
2013	4	1 from family recently moved to area	3 families 1381 – 2148 metres from the school
2014	6		521 – 1353 metres from the school, only one had attended the school nursery
2015	0 but there were 5 late applications, 4 of whom were children in the area applying late for various reasons and 1 was out of area		
2106	0 but there are 2 children on the waiting list, one of whom has moved into the area and the other lives more than 3000 metres from school		

25. The LA says that these figures do not appear to support the assertion from the governing body that there are many disappointed applicants who live close to the school but outside the catchment area and who are unable to gain places because they live outside the catchment area.

26. The school responded that the statistics supplied by the LA only account for those parents who appealed. The school said that it spoke to the “*actual*” parents, many of which did not appeal, as the policy at the time meant that they had no grounds for an appeal. Although this was done on an informal basis the school felt the information it gained from this was strong enough to look into changing its policy.
27. The LA went on to say that within the Telford and Wrekin area all schools except four Catholic aided primary schools and one Church of England primary school operate with catchment areas forming part of their oversubscription criteria for admission. It asserts that this system is easy for families to understand and gives them some form of belonging to a school’s area even if they choose not to express a preference for that school. It accepts that the removal of the catchment area from the school’s policy is not in itself in contravention of the Code but argues that the consequence could be unfair. It provided the following figures about the numbers of admissions that were from within the area as follows:

year	Number of places allocated in area from PAN of 40
2011	25
2012	21
2013	23
2014	31
2015	30
2016	26 (of whom 15 were siblings) 10 places were allocated to out of area siblings

28. The LA says that the figures show that families living outside the catchment area but nonetheless relatively close to the school, have been able to gain places in the past as the closest “out of area” candidates. It argues that the new policy giving priority to those with a faith commitment and then to those who have been able to secure a nursery place above those who live close to the school will disadvantage the local community. It says that this is particularly true of families living in rented accommodation who tend to move around more and will not always be able to secure a nursery place at the school because of the timing of their move. The policy of giving a child with a sibling already at the school some precedence with no reference to where they live could mean that families living some miles from the school with a sibling attending in a higher year group (perhaps because they have moved house) will have priority over a family living close to the school with no sibling connection.
29. The LA agrees with the chair of governors that the area surrounding the school displays social deprivation and it considers that the new admission arrangements may make it more difficult for the families in the area to gain a place in their local primary school on the grounds of where they live. The 2016 admission policy safeguards places for local families and the LA considers that the new policy does not do this in its current form.

30. I have considered the issues raised and the information provided by the school and the LA and I shall first consider the decision making process and the consultation that took place.
31. The school informed me that it had determined the arrangements at the meeting of the governing body on 10 December 2015 and supplied me with a copy of the minutes of this meeting. While it is clear that the governing body decided to change the arrangements at that meeting and determine them for 2017, the minutes do not provide enough detail to be able to tell how the governing body carried out its consultation on the changes and how it considered any responses that it received.
32. The school says that it undertook the consultation between 7 December 2015 and 31 January 2016. However, this consultation ended after the governing body had determined the arrangements. I asked the school for evidence of the information sent to the various parties listed in paragraph 1.44 of the Code and for copies of any responses received together with evidence that the governing body took these into account in its decision making. I also asked for further information about the research and the discussions that took place in the governing body that led to the proposal to change the arrangements by removing the catchment area and replacing it with faith based criteria and a priority for those who attended the school nursery.
33. The Code in paragraph 1.42 says "*when changes are proposed to admission arrangements an admission authority **must** consult ...*". Paragraph 1.43 sets out when consultation **must** take place. Paragraph 1.44 lists who **must** be consulted. From the evidence provided, I do not consider that the consultation was undertaken in such a way that it complied with the Code. Some consultation must have taken place before 10 December 2015 because the LA was aware of the proposed changes and responded in advance of the determination. However, the diocese was not consulted and, as a result, the school did not comply with paragraph 1.44f of the Code; it also failed to comply with paragraph 1.38 of the Code and the Diocesan Boards of Education Measure 1991 which require a Church of England school to consult its diocese about proposed admission arrangements before any public consultation.
34. Although I have seen the poster that was placed on the school website and around the school informing readers that changes were proposed and referring them to the website and emails were sent to other schools in the area, I do not consider that this constituted a proper consultation. In particular, there was insufficient communication with other parties to comply with the requirements of paragraphs 1.44 and 1.45 of the Code. Parents of children aged two to eighteen have to be consulted and I have not seen evidence that this took place.
35. The decision to make changes took place before the consultation and I have not been shown any evidence that the governing body reviewed any responses at the end of the consultation period.

36. The objector expresses concern about the removal of the catchment area. It is within the power of the admissions authority, in this case the governing body of the school, to decide whether or not to use a catchment area as an oversubscription criterion. However, the objector draws attention to a potential consequence of this decision which is that local children who do not attend the church but who, up until now, have had priority for admission will lose this priority and could find that they do not have priority for any school in the area because neighbouring schools will give priority to those who live within their own catchment areas. I have drawn attention also to the fact that the new faith-based criterion actually gives priority not just to those who attend St Matthew's Church but any place of religious worship on a regular basis. The governing body states that it is its objective to prioritise local children but it is hard to see how it can achieve this by removing the established catchment area and adopting oversubscription criteria which would give a higher priority to children of any family on the basis of regular faith practice wherever they may live as well as to any child who attends the nursery over those who live locally but do not meet these criteria. The governing body argues that the school is not located in the middle of its catchment area and there are children who live just outside the catchment area that do not gain places. The figures provided by the LA do not support this because in recent years there have been at least 10 of the 40 available places allocated to children outside the area. In my view, the governing body needs to consider the impact on those children who live in the former catchment area, who do not attend a place of worship, do not have a sibling in the school and who are not in the catchment area for any other school. These children have up to now had a priority for a place in the school but from 2017 such children will not have a high priority for admission at this school or to any other school because they are living outside the catchment areas for the neighbouring schools. In my view this makes the change unfair for these children. The Code in paragraph 14 required admission arrangements to be "fair" and in the combined effect of the changes to the faith criterion and the catchment removal and nursery make it unfair for local families.

37. The LA says that this problem is further compounded by the change that gives priority to those who have attended the school nursery. The Code in paragraph 1.39B permits a school to give priority to "*children eligible for the early years pupil premium, the pupil premium or the service premium who are a) in a nursery class which is a part of the school; or b) attend a nursery that is established and run by the school.*" The Code neither prohibits nor permits priority for other children so I have considered this against the core principles of the Code. Where priority is given to any child who has attended the nursery, the policy creates a problem for children who live close to the school and were either unable to gain a place at the nursery or whose parents chose to send them to a different local nursery. The nursery has 64 places and the school PAN is 40 so it is inevitable that at least 24 of those who attend the nursery will be unable to attend the school. The school's 2016 admission policy for the nursery states that children will not be discriminated against if they do not attend the school nursery but this change to the school admission arrangements will do just this. The Code at paragraph 14 requires arrangements to be fair and in

my view the use of this criterion as it is written is unfair for these children and I uphold the objection.

38. I raised two other matters with the school that are set out in paragraphs 13 and 14 above. The school has responded positively to the comments and has agreed to review the wording in the arrangements concerning looked after and previously looked after children in order to comply with paragraph 1.7 of the Code and to include a reference to the process for requesting admission out of the normal age group as required by paragraph 2.17 of the Code. The Code requires the school to make these changes. I also observe that the tiebreaker set out in the arrangements could fail if the governing body had to allocate the last place to one of two applicants who lived the same distance from the school. The school should add a simple tiebreaker to deal with this circumstance in order to comply with paragraph 1.8 of the Code.

Summary of Findings

39. The objection was about the changes made to the school's admission arrangements for 2017. The particular concern raised was about the introduction of a criterion that gives priority to children who have attended the school nursery. I have upheld this objection on the grounds that the criterion does not comply with paragraph 1.39B of the Code.
40. I have also reviewed the overall arrangements and concluded that the consultation process and the decision making about the changes do not comply with paragraphs 1.42 - 1.45 of the Code. I was not provided with sufficient evidence that the required parties had been consulted properly or that any responses could have been considered in such a way that they could inform the decision made.
41. The school has decided to remove its catchment area and replace it with new oversubscription criteria. While the school is permitted to make such decisions I have found in this case that the consequence to the decision leaves some children without a priority for any local school when previously they had a priority for this school. In this respect the change is unfair on these children and does not comply with the requirement in paragraph 14 of the Code for the arrangements to be "*fair*".
42. Lastly I drew attention to the need to review the wording concerning looked after and previously looked after children in the arrangements and to add a reference to the process for requesting admission out of the normal age group. The school has agreed to make the necessary changes in order to address these points. In addition, the school should add a tiebreaker to deal with the circumstance where two applicants for the last place available live the same distance from the school.
43. Paragraph 3.1 of the Code says that "*admission authorities must, where necessary, revise their admission arrangements....within two months of the decision unless an alternative timescale is specified...*". In view of my conclusion that the consultation that took place concerning these changes

did not comply with the Code, I wish to give the governing body sufficient time to consult with the parties listed in paragraph 1.44 of the Code when it reviews the changes it introduced into its determined arrangements for 2017. I consider that three months from the date of this determination will give sufficient time for this to be completed and allow communication of the outcomes with parents before the January admission applications deadline.

Determination

38. 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 governing body of St Matthew's Church of England (Aided) Primary School, Telford and Wrekin.
39. I have also considered the arrangements in accordance with section 88I(5). I determine that there are matters as set out in this determination that do not conform with the requirements relating to admission arrangements.
40. 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 arrangements within two months of the date of this determination unless an alternative period is specified. In this case I determine that the arrangements must be revised within three months of the date of this determination.

Dated: 7 September 2016

Signed:

Schools Adjudicator: David Lennard Jones