

## DETERMINATION

**Case reference:** ADA2426

**Objector:** Northamptonshire County Council

**Admission Authority:** The Federation of Culworth Church of England Voluntary Aided & Boddington Church of England Voluntary Controlled Primary Schools' Governing Body.

**Date of decision:** 30 August 2013

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the Federation of Culworth Church of England Voluntary Aided & Boddington Church of England Voluntary Controlled Primary Schools' Governing Body.**

**I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways recorded 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 as quickly as possible.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Adjudicator by the schools admissions manager on behalf of Northamptonshire County Council, the local authority (the LA) the objector, about the admission arrangements (the arrangements) for Culworth Primary School (the school), a Church of England (CE), voluntary aided (VA) school for pupils of age range 4 -11 years for September 2014. The objection is to the oversubscription criteria which in the version provided by the school give as the sixth criterion, priority for reception places in Year R for children attending the Mini Meadows Pre-school or any other Pre-school based at Culworth School.

### **Jurisdiction**

2. These arrangements were "ratified" on 24 September 2012, by which I take to be determined, under section 88C of the Act by the federation's governing body which is the admission authority for the school. The objector submitted the objection to these determined arrangements on 3 May 2013. 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.

### **Procedure**

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
  - a. the objector's letter and form of objection dated 3 May 2013;
  - b. the school's response to the objection and supporting documents;
  - c. the faith body's, the Diocese of Peterborough (the diocese), response to the objection and supporting documents;
  - c. the LA's composite prospectus for parents seeking admission to schools in the area in September 2013 ;
  - d. maps of the area;
  - e. copies of the minutes of the meeting of the governing body at which the arrangements were determined;
  - f. a copy of the determined arrangements; and
  - g. information about the Mini Meadows pre-school group.

### **The Objection**

5. The objection is to the inclusion of an oversubscription criterion giving priority for admission to the school for having attended particular pre-school provision. The objector refers to paragraphs 1.8 and 1.9e of the Code:

### **Other Matters**

6. The first oversubscription criterion in the admission arrangements of 2014, sent to me, refer only to looked after children and do not include previously looked after children as required by the Code, paragraph 1.7 "All schools **must** have oversubscription criteria for each 'relevant age group' and the highest priority **must** be given, unless otherwise provided in this Code, to looked after children and previously looked after children. Previously looked after children are children who were looked after, but ceased to be so because they were adopted (or became subject to a residence order or special guardianship order)."
7. In addition, the school's website shows the admission arrangements for 2012. The absence of the determined arrangements for admissions in 2013 and September 2014 is contrary to the Code, paragraph 1.47 which says, "Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and **must** publish a copy of the determined

arrangements on their website displaying them for the whole offer year (the academic year in which offers for places are made).”

8. The minute of the governing body ‘ratifying’ the arrangements is dated 24 September 2012. The governing body subsequently consulted the diocese who asked the governing body to place the criterion as a sixth rather than fifth priority. The diocese asked the LA to consult on the arrangements as part of the consultation on its arrangements for all schools which was 3 December 2012 to 28 January 2013. The letter from the chair of governors dated 29 May 2013 says that the arrangements were determined 24 September 2012, that is before the consultation. This being the case, the arrangements do not comply with the Code; paragraphs 1.42 -1.45 indicate the consultation requirements, determination should not precede consultation.

## **Background**

9. The school is a small rural primary school. The published admission number (PAN) is 27. It is part of the Federation of Culworth CEVA & Boddington CEVC Primary Schools. The website indicates that the school is undersubscribed in every year group. The chair of governors, when asked about subscription for 2012 and 2013 confirms this *“Culworth CEVA Primary School was grossly UNDER subscribed in both years. Our PAN would allow a total of 189 children - last year the NOR was 126 and this year 113.”* In September 2011, 18 children were admitted to the Reception class and 15 children were admitted in 2012.

10. At the governing body meeting of 24 September 2012, the governing body decided to include attendance at the playgroup at the school as criterion 5 within the over subscription criteria for 2014. The chair of governors has confirmed that the arrangements were determined at that meeting. The governing body sent the arrangements to the diocese “for approval”. The diocese, as can be seen below, suggested a lower priority. The arrangements were then amended (but after determination) and included in the consultation undertaken by the LA on behalf of its schools.

11. A pre-school group, Mini Meadows, operates on the site. The pre-school is a privately owned company. It has been established for 25 years. The pre-school operates from a classroom in the school; the premises consist of a classroom, kitchen area, toilet facilities and a small outdoor play area. The pre-school also has use of the school hall, playground, garden, field and library. It is registered for 20 children from two years to five years at any one time. The school currently charges £77 per week to cover costs.

12. The pre-school publishes its admission policy on its website and shows its admission arrangements as follows:

*We arrange our waiting list, taking into account the following:*

- *date of birth*
- *the vicinity of the home to the setting*

- *siblings already attending the setting*
- *length of time on the waiting list*

*We keep a place vacant, if this is financially viable, to accommodate an emergency admission.”*

13. The sessions are described as follows;

*“At Mini Meadows we have one group per session. The maximum number per session is 20 children.*

*Our sessions are:*

*Monday: 9am – 12noon & 12.30pm – 3.30pm*

*Tuesday: 9am – 12noon & 12.30pm – 3.30pm*

*Wednesday: 9am – 12noon & 12.30pm – 3.30pm*

*Friday: 9am – 12noon.*

*All sessions are a mixed age group from 2 to 4 years apart from the Monday afternoon session which accommodates 3 to 4 year olds. This session provides opportunities to get the children ‘ready’ for primary school. A lunch club operates on a Monday, Tuesday & Wednesday and Friday and is open to any child attending that day. There are no minimum sessions required to attend Mini Meadows.”*

14. The Fees: The explanation of funding arrangements in the policy document is as follows;

*“We are members of the Northamptonshire Early Years Partnership and as such accept funding for eligible 3 and 4 year olds. Preschool will inform parents/carers when their child becomes eligible and will provide a Parent Declaration Form to complete to secure the funding. Funding is available for up to 15 hours per week for 38 weeks per year. Parents/carers can choose to use funding entitlement across a maximum of two settings. The minimum allocation to one setting is 2.5 hours and in this instance partial funding and self funding can be used in payment for sessions.”*

The website describes the fee arrangement as follows;

*“In addition we offer a 30 minute lunch club each day 1200 - 1230. The lunch club is extra to the government funding and is charged at £2 per session. All children between the ages of three and four years are eligible for a government funded pre school place. This entitlement starts from the beginning of the school term immediately following your child's third birthday and continues until the end of the final term before the child starts primary school.*

*Children are entitled to 15 hours of funded pre school education for 38 weeks per year, which covers the school year or for 11 hours per week per full year at nursery settings that are open all year. At Mini Meadows we operate during school term time only, this means your child can utilise five 3-hour sessions of education per week. It is possible to split your funding between two different*

*settings, i.e. Mini Meadows and a nursery, but provision needs to be made for this and we would advise contacting us beforehand to discuss.*

*For those children attending Mini Meadows under three years old and therefore not eligible for funding and for those funded children attending more than 5 sessions per week sessions are charged at £12.00.”*

## **Consideration of Factors**

15. I have first considered what are the determined oversubscription criteria for September 2014.

16. The school says it determined its admission arrangements on 24 September 2012. It added a new oversubscription criterion as criterion 5, namely “Children attending the Mini Meadows Pre-school or any other Pre-school based at Culworth School.” The arrangements were therefore changed without meeting the requirement to consult with the diocese before making any change or to consult as required by the Code. Nevertheless, as the school says it determined its arrangements I have jurisdiction to consider those arrangements.

17. The governors determined the arrangements with oversubscription criterion 5 giving priority for attending the pre-school, though the minute does not record the admission arrangements in that detail. The evidence shows though, following comments from the diocese the school changed priority for attending the pre-school to be oversubscription criterion 6. The Act, as set out on paragraphs 3.6 and 3.7 permits changes to be made to determined arrangements in certain specified circumstances without referring the change to the adjudicator. One permitted change is to give effect to a mandatory requirement of the Code. It is questionable whether the change in priority order can be considered a lawful change, but it is not part of my jurisdiction in this case to consider the process of the variation

18. The determined arrangements as amended therefore are:

1. The governors will admit ‘Looked After Children’, that is Children in Local Authority care.
2. The governors will admit pupils on social or medical grounds, where professionals have clearly identified that the school will best meet the needs of the child.
3. Children living with their parent(s)/legal guardian(s) in the villages of Culworth, Moreton Pinkney, Sulgrave and Thorpe Mandeville.
4. Children who have a sibling attending the school at the time of admission.
5. Children of worshipping members of St. Mary the Virgin, Culworth; St. James the Less, Sulgrave; St. John Baptist, Thorpe Mandeville; St. Peter & St. Paul, Chipping Warden; St. James, Edgcote; and St. Mary the Virgin Moreton Pink.

6. Children attending the Mini Meadows Pre-school or any other Pre-school based at Culworth School.

7. Children of worshipping members of any Church that is a member of Churches Together in England

8. Children of parent(s)/legal guardian(s) of other faiths, or none, who wish their child to be educated in a Church School and Christian environment.

19. I have considered the reasons given by the LA for the objection and examined the factors relevant to the position of "Mini Meadows pre school and any other pre school based in Culworth School". As there are no other pre-schools based in Culworth School at present I refer to Mini Meadows pre-school as the pre-school. Although I see that the school is, at present, undersubscribed, I must consider the determined oversubscription criteria for compliance with the Code and their application. I have considered the reasons given by the LA for its objection, whether there are any parts of the Code that might apply specifically in this case and the requirements in paragraph 14 of the Code that, "...admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated." The factors I have considered include those described below.

20. Paragraph 1.8 requires that, "Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair and comply with all relevant legislation, including equalities legislation." For the small school that has consistently been undersubscribed it is understandable that it might be thought reasonable to give priority to children attending the pre-school using part of its premises. At present there are no other pre-schools at Culworth so the impact of more than one pre-school has not been assessed for admissions in 2014, but any pre-school opening prior to the closing date for applications for the school would have the same priority conferred on any of its children. The inclusion of nonexistent pre-schools reduces the clarity of the criterion. If applied the criterion would be objective in that a child either does or does not attend the existing or as yet not open pre-school, but it is difficult to accept that it is procedurally fair to have a criterion that covers both the actual and hypothetical position of attending existing or new pre-school(s). As drafted I do not accept that the requirements in this part of paragraph 1.8 are met.

21. Paragraph 1.8 also specifies that, "Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs". The school's arrangements themselves do not directly or indirectly disadvantage unfairly any of these groups or individual children. I have also looked at the arrangements for the pre-school and again I cannot find any evidence of any particular social or racial group, nor any child with a disability or special educational needs that might be disadvantaged directly or indirectly in gaining a place at the pre-school. I am satisfied that there is neither direct, nor

indirect disadvantage for the groups and individual children at the point of being admitted to the pre-school or school.

22. The objector argues that the inclusion of a “nursery priority may be in breach of the Code” as paragraph 1.9 e) says an admission authority “**must not give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation, including religious authority.**”

23. In this case, I consider the pre-school group to be an associated organisation as it is separate and privately owned. From the prospectus for the group sent to me and as shown above it is clear that fees are charged directly from parents for children joining the pre-school prior to being eligible for the early years entitlement funding. In addition, in the ‘Fees’ section, mention is made of arrangements for pupils who are “*Government funded*” for whom “*a parent/carer declaration must be completed each term*”. In these case the pre-school can claim funds for 15 hours for each child aged three and four years who attends the group.

24. The state funding of a child’s attendance at the pre-school for up to 570 hours per year taken as 15 hours per week is not paid to the parent and then to the pre-school, rather directly to the pre-school by the LA. The financial support is not directly given; a parent may choose where they “spend” this funding. Some children at the pre-school may attend for the entitlement provision and no additional time. Some children may attend prior to being eligible for the entitlement and therefore already have secured their place, some children may attend for the entitlement provision and attend for additional time for which their parents pay the pre-school.

25. The consequence of a parent taking up a pre-school place paid entirely by the state funded entitlement means that the pre-school group receives financial support, albeit indirectly, from the parent. This may be considered as breaching the spirit, if not the letter, of paragraph 1.9(e) of the Code. However, I do not rely on this for my decision. While it is clear from the both its policies and on its website that parents are entitled to use the “government funded” entitlement there, the pre-school nonetheless charges fees. The school does not make any distinction in its arrangements as to whether or not the pre-school has received additional money from the parents of an applicant for a place at the school. Parents feeling obliged to take up a pre-school place to gain priority for Reception may well, depending on their circumstances, then be obliged to pay fees to “top up” the provision to meet their child care needs.

26. Also, the school charges £77 per week for the use of the premises and facilities. This is income and, in my view, constitutes indirect financial support from the parents via the pre-school and is a circumstance that I consider to be in breach of the Code.

27. I have also considered the oversubscription criterion against the general requirement for arrangements to be fair, clear and objective.

28. Regarding the criterion that was fifth in the list of oversubscription criteria as determined by the governors on 24 September 2012, the diocesan minutes of the meeting 4 December 2012 show the following discussion:

**“ Culworth Primary**

*The DDDE (the Diocesan Deputy Director of Education) presented the admission policy for consultation by the committee. This rural school has a commercial nursery on the school site and wishes to include the nursery children at Item 5 of their oversubscription criteria in their 2014 policy. This would rank them above those applying for faith places as members of the Benefice, (6) or any Church that is a member of Churches Together in England, (7).*

*The committee discussed the issue of drawing pupils away from neighbouring schools following attendance at the nursery, the concerns about approving a commercial venture which is not church based, the effects of the Trust Deed of the school on the running of the nursery, the prejudice against parents choosing to keep their school at home until school age, and the similar discussions that had taken place with another local rural school. That particular Governing Body had decided to place the nursery children at criterion 6.*

*The committee agreed that their preference would be for worshipping members of the school's benefice to be ranked higher than children attending the nursery, and this would bring the policy in line with another school in the locality.*

***The committee asked the DDDE to advise the school that after lengthy consideration, the Board's view was to advise the governors to place the children attending the nursery at criterion 6, which would be in line with the other local school.”***

The chair of governors wrote as follows on this point;

*“In the Governors' opinion, the inclusion of this criterion is appropriate as it gives some priority to those families with children who have already formed a link with the school, but is in a low enough position in the criteria that it does not disadvantage parents with children living in the feeder villages, or who have siblings already in the school, or are worshipping members of the local church. Further, we believe that the Admissions Policy follows the School Admissions Code under paragraph 1.8 and understand that there is nothing explicit about nurseries in the Code at paragraph 1.9, neither do they appear in the list of unacceptable criteria.”*

29. I accept that the school and the diocese have considered the implication of the governors' decision and intended to give priority to families who live in the locality, have a sibling connection and are members of relevant churches in advance of children attending the pre-school. Admission authorities may give priority to certain pupils and the Code makes some of these groups, for example, siblings, explicit. The Code is silent on the matter of nursery provision and no



conclusion of fairness or unfairness should be drawn from this silence.

30. The matter I must consider is whether this criterion is fair as required by the Code. With reference to paragraph 14 of the Code, "In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."

31. I have considered whether it is fair to determine admissions into the school, for which admissions arrangements are regulated by statute, by reference to attendance at the pre-school group, admission to which is not regulated. The Code specifically allows for a secondary school to name a primary school (but not a fee-paying independent school) as a feeder school, for example, because admission to the primary school will itself have been governed by admission arrangements which were subject to the Code. So it can be assumed that the primary school's arrangements are fair, clear and objective.

32. I have read the admission arrangements for Mini Meadows. I do not view them as unreasonable as such, though they would be unlawful if used for admission to the reception year at the school. I note, for example, that applications appear to be considered as they are received and then a waiting list is kept, but there is no indication of how a place will be allocated if more than one child applies for the only remaining place, also there is no right of appeal shown as one would see for school admissions. I acknowledge the Code does not apply to nursery provision. However, if admission to the school was in any way dependent on admission to the pre-school via these arrangements, that is, making admission to the school in any way dependent on attendance at the provision for which admission is unregulated, I consider that is unfair and undermines the statutory framework Parliament has put in place for admissions to compulsory schooling.

33. I have also considered that attending nursery provision is not obligatory and parents may make choices about attendance. The pre-school operates sessions term time only, 9.00 am to 3.30 pm for three days a week, half a day on Friday and not at all on Thursday. Part-time provision may be too difficult to organise for some who seek more than this, for example working or studying parents. Not all parents may be able to take up a place at the pre-school group because of these circumstances.

34. I consider the criterion confers an unfair advantage on children whose parents can take advantage of a nursery place at the school in comparison to those whose parents are not willing or able to do so, or may have wished to do so and were not allocated a place.

35. Parents who view themselves as meeting criteria 7 and 8, "*7 Children of worshipping members of any Church that is a member of Churches Together in England and 8 Children of parent(s)/legal guardian(s) of other faiths, or none, who wish their child to be educated in a Church School and Christian*

*environment.* “ may consider it unfair that children with a nursery place have precedence over them. If the school was oversubscribed, those parents may then seek a nursery place when they had not previously done so.

36. The Code says at paragraph 2.16; “**Admission of children below compulsory school age and deferred entry to school** - Admission authorities **must** provide for the admission of all children in the September following their fourth birthday. The authority **must** make it clear in their arrangements that: a) parents can request that the date their child is admitted to school is deferred until later in the academic year or until the term in which the child reaches compulsory school age, and b) parents can request that their child takes up the place part-time until the child reaches compulsory school age.”

37. I take this to mean that parents do not have to send their child to school, whether full or part time, until the term after which the child is five years old. It is reasonable to infer then they should not have to attend a particular nursery class/pre-school group, when three or four years old, to increase the chance of gaining a place at their preferred school when the child reaches compulsory school age. Parents have an absolute right to wait until their child is of statutory school age before school admission.

38. Therefore, I think if there is any part of the admission arrangements which results in a parent feeling under pressure to send their child to school including pre-school, earlier than they wish and before they are legally obliged to do so, then this seems to me to go against the assumption behind this paragraph of the Code, and I would consider it to be unfair.

39. For these reasons also I consider that it is unfair for the chances of admission to the school at the compulsory school age to be in anyway dependent on gaining a place in the pre-school.

## **Conclusion**

40. There is no specific provision either in the legislation or in the Code which deals with the question of giving priority in admissions to school on reaching compulsory school age on the basis of having attended a particular nursery class, pre-school or any other nursery provision. I have therefore considered those factors I consider pertinent.

41. The over subscription criterion refers both to the exiting pre-school and any other pre-school based at the school. I find it is not procedurally fair to have a criterion that covers both the actual and hypothetical position of attending existing or new pre-school

42. I am, however, satisfied for the reasons above that there is neither direct, nor indirect disadvantage for the groups and individual children referred to in the Code at the point of being admitted to the pre-school or school.

43. I consider the inclusion of an independent fee paying pre-school group at which parents may feel obliged to “top up” fees or enrol and pay fees before becoming eligible for government funding and from which the school derives

income to be contrary to paragraph 1.9 e) of the Code.

44. If the school becomes oversubscribed then parents may feel pressurised into taking up a pre-school place to increase the likelihood of obtaining a Reception place. The Code expressly forbids requiring parents to take up their school place until the term in which the child reaches compulsory school age, so I consider this to be unfair.

45. I also consider it is unfair to determine admissions into the school where the admissions arrangements are regulated by statute, by any reference to attendance at the -school where admission arrangements would not be lawful if used for admission to the school.

46. My decision, therefore, is that taking all these considerations together these arrangements giving priority for attending the pre-school group are not compliant with the Code. There are also other matters as described above that do not conform to the Code.

#### **Determination**

47. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by of The Federation of Culworth CEVA & Boddington CEVC Primary Schools' Governing Body.

48. I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways recorded in this determination. 49. By virtue of section 88K(2), the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.

Dated: 30 August 2013

Signed:



Schools Adjudicator: Miss Jill Pullen