

DETERMINATION

Case reference: ADA/2530

Objector: Hertfordshire County Council

Admission Authority: The Governing Body of St Michael's Church of England (VA) Primary School

Date of decision: September 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 governing body for St Michael's Church of England (VA) Primary School, Bishop's Stortford, Hertfordshire.

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.

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 Hertfordshire County Council, the local authority (LA) for the area, the objector, about the admission arrangements (the arrangements) for St Michael's Church of England Primary school (the school), a voluntary aided (VA) school for 3 - 11 year olds for September 2014. The objection is to the prioritisation of children attending the school's nursery class in the school's oversubscription criteria for the Reception Year (YR) group.

Jurisdiction

2. These arrangements were determined under section 88C of the Act by the school's governing body, which is the admission authority for the school. The objector submitted their objection to these determined arrangements on 28 June 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 form of objection dated 28 June 2013 and subsequent comments of 24 July 2013;
 - b. the school's response to the objection and supporting documents dated 15 July and 4 and 10 September 2013;
 - c. the response of the Diocese of St Alban's (the diocese), which is the faith body for the school, dated 15 and 24 July 2013;
 - d. the LA's composite prospectus for parents seeking admission to schools in the area in September 2013;
 - e. maps of the area identifying relevant schools and where those who applied for places at the school over the past two years live;
 - f. confirmation of when consultation on the arrangements last took place;
 - g. copies of the minutes of the meeting of the governing body at which the arrangements were determined; and
 - h. a copy of the determined arrangements.

The Objection

5. The objector refers to the determination by the adjudicator in 2012 in respect of another Hertfordshire school in which the inclusion of attendance at the school's nursery in the oversubscription criteria was found not to conform to the Code (case reference ADA/002263). The objector refers also to a subsequent complaint to the Secretary of State for Education that the school concerned had failed to revise its arrangements to give effect to the adjudicator's determination and notes that the Secretary of State upheld that complaint and made an order declaring the governing body to be in default of a statutory duty.
6. The objection goes on to state that the objector suspects in the light of this case that "any prioritisation of nursery children in a school's oversubscription criteria is in breach of the School Admissions Code." The objector states further that as the LA for the area, they consider that they are required by paragraph 3.2 of the Code to refer the admission arrangements of St Michael's School to the adjudicator.

Other Matters

7. When I reviewed the admission arrangements, I identified a number of respects in which they appeared not to conform to the requirements of the Code. These were:
 - a. That the arrangements were not published on the school's website;
 - b. The absence of a final tiebreaker to separate two applicants who lived equidistant from the school;
 - c. A lack of clarity in the definition of looked after and previously looked after children, and
 - d. That the school's supplementary information form (SIF) sought information which was not necessary for the school to apply its oversubscription criteria.

Background

8. St Michael's is a 3 – 11 school in the town of Bishop's Stortford. Its nursery is part of the school and is inspected by Ofsted on that basis. The school's most recent Ofsted inspection in 2009 found it to be an outstanding school. The report noted that the school was popular and oversubscribed and that it was situated close to the town centre with many pupils travelling from the outskirts of the town to attend. The school has a published admission number (PAN) of 30. The material on the school's website for 2013 states that there are 26 places in the nursery, but the school has confirmed that does in fact offer 30 part time nursery places.
9. When I looked at the school's website on 9 July 2013, the material on admissions related to 2013 admissions only. The nursery and YR admissions policies were easy to find as were the SIFs for both. The school has explained that it had not yet published its determined arrangements for 2014 on the website in part because of the objection. I return to the question of publication of arrangements below.
10. The oversubscription criteria for YR comprise a number of categories which can be summarised as follows:
 - 1 Children Looked After;
 - 2 Siblings at the school at the time of application;
 - 3 Children whose parent/guardian attends Sunday worship at St Michael's Church or Holy Trinity Church on average twice a month and has done so for at least a year;

4 Children whose parent/guardian attends Sunday worship at other Church of England churches on average twice a month and has done so for at least a year;

5 Children whose parent/guardian attends Wednesday morning worship at St Michael's or Holy Trinity or Sunday worship at another Christian Church affiliated to CTE or the Evangelical Alliance and has done so for at least a year;

6 Children who attend or have been allocated a place at St Michael's nursery; and

7 Any other children.

11. The oversubscription criteria for the nursery and YR are the same other than that there is, of course, no nursery criterion for admission to the nursery. Parents apply to the school direct for a nursery place but also log their application with the LA on line. A clear closing date for applications is given and for 2013 this was 22 March 2013 which is two months after the deadline for YR applications. No account is taken of when an application for the nursery was made provided it is made by the closing date. There is a clear statement that parents whose children attend the nursery must reapply for a place in YR.
12. The school offers only the state funded free to parents nursery provision of 15 hours a week for 38 weeks a year. There is no scope to buy further provision. All children attend in the mornings. The school has told me that the nursery is not currently oversubscribed and it can therefore admit all children who would like a place. The nursery opened in 1997 and the oversubscription criterion giving priority for YR to children who have attended the nursery has been in place for about 12 years.

Consideration of Factors

13. The LA in its objection states that it "suspects that any prioritisation of nursery children in a school's oversubscription criteria is in breach of the School Admissions Code". The Code does include at paragraph 1.9 a number of oversubscription criteria whose use is forbidden, such as giving priority to children who have attended fee paying schools. Priority for attendance at a school's nursery class is not categorically prohibited in this way. The Code does not give a definitive list of acceptable oversubscription criteria and the critical issue is whether a particular criterion is fair in the context of the circumstances of a particular school. I have accordingly considered whether the inclusion of priority for children at this nursery for this school meets the requirements of paragraph 14 of the Code that all admission arrangements must fair, clear and objective together with the more detailed provisions of paragraph 1.8 of the Code.

14. As the school has pointed out, the nursery criterion for the school comes low down in its oversubscription criteria after children who are looked after, siblings and those given varying degrees of priority under the school's faith-based criteria.
15. The school has been oversubscribed since at least 2011. A very helpful table provided by the school shows that over the past few years the school has always been able to admit all looked after children and all siblings. For 2011 and 2013, the school was also able to admit all those applying under faith-based and the nursery criteria and one or two other children. In 2012, however, the school reached its PAN under the faith-based criteria and was not able to admit one child applying under those criteria along with two children who had attended the nursery. It has in each year had to refuse places to between four and six children for whom it was their first preference school as well as to a number of children for whom it was second or third preference but who could not be accommodated at a higher preference school.
16. Information and maps provided by the LA show that for 2013 children admitted under the nursery criterion generally lived no further from the school than those admitted under other criteria. Seven children who were admitted live rather further away from the school than others who gained a place. All of these were admitted under non-nursery criteria. On the other hand, some of those who did not gain a place lived closer to the school than many of those who were successful. The school is one of 12 primary schools in the CM23 post code district of Bishop's Stortford. In such a relatively urban setting, it would be expected that children might go to a primary school that is not the nearest to their home. In addition, as a school with a religious character, St Michael's might be expected to draw children from a wider area as part of its mission to children whose parents wish them to be educated at such a school.
17. In its letter of 22 July, the school sets out its arguments for its nursery criterion. It notes that the nursery criterion comes after looked after children, siblings and those admitted under faith-based criteria. It argues that it makes sense in allocating the last few places to prioritise those already in the nursery by having nursery attendance as its penultimate criterion. The school points to the educational and social benefits of continuity for children across the whole of the foundation stage and, in particular, from nursery to YR. It also notes that children and parents make friendship groups and establish routines during the nursery year and that – in its words – it is “nonsensical to send some children from school A to school B and some from school B to school A to satisfy just to satisfy some form of administrative correctness.”
18. The diocese supports the school's use of a nursery criterion. It thinks it is reasonable for a school with a religious character to have a nursery criterion that comes after looked after children, siblings and faith-based criteria. The diocese argues that at St Michael's the nursery criterion has had very little impact on other local children as relatively few have

been admitted under the nursery criterion.

19. The LA in its comments of 24 July on the school's letter of 22 July noted that only four out of 277 Hertfordshire primary schools with nursery classes included any priority for YR admissions for nursery attendance and that they all taught across the whole foundation stage. They strongly refuted the notion that their objection was a matter of "administrative correctness" insisting rather that it was a matter of what was or was not permitted by the Code. They also made the point that the inclusion of the nursery criterion could still potentially prevent local families who were unwilling or unable to use the nursery from gaining a place in YR at the school.
20. All oversubscribed schools will inevitably disappoint some parents who would have liked a place for their children. As noted above, in the case of St Michael's whether a child has attended the nursery can in some years mean the difference between gaining a place or not gaining a place at this popular and successful school. The nursery criterion is certainly clear and objective. As I set out above, the question I must address is whether it is fair. St Michael's is clearly a really good school and many parents will be keen to send their children there. I do not find that the school's admission arrangements are particularly disadvantaging those who live closest to the school.
21. I appreciate the school and diocese's arguments about the educational and social benefits to children of continuity across the whole of the foundation stage and, in particular, from the nursery to YR. I also think that it is helpful to parents that the nursery admission arrangements are very clearly displayed on the school's website. While there is no provision for formal objections to the school's nursery admission arrangements, the fact that the nursery and YR arrangements are essentially the same means that an objection to the YR arrangements effectively serves as an objection to the nursery arrangements. I think that this is also helpful to parents and others. I also think there is a reasonable and sensible deadline for nursery applications.
22. I have taken all these factors into account in considering whether it is fair that the school should give any priority to YR to children who attend its nursery. There are, however, other relevant factors. In the first place, there is no provision for an appeal against a refusal of a nursery place. While the school has told me that its nursery is not currently oversubscribed, it could well be in the future. That would mean that a child who failed to secure a place at the nursery because the arrangements had not been applied properly and then failed to gain a place in YR could be seen to have been doubly disadvantaged. Secondly, some parents may not be able to use St Michael's nursery as its provision may simply not fit in with their wider responsibilities – perhaps because they need nursery provision that can offer a longer day or different times. Others, of course, may simply wish to keep their children at home with them or to use a different type of childcare.

23. Nursery provision is not compulsory and parents do not have to send their children to school until the age of five. Given the understandable popularity of St Michael's there is the possibility that parents may feel pressured to take a place in its nursery when they would rather not do so in order to increase their chances of a place in YR. As the admission number for the nursery is the same as the YR PAN it is a real possibility that in some years there will not be any spaces for children who have not attended the nursery and who do not satisfy the higher faith-based or sibling criteria.
24. On balance, therefore, I consider that the inclusion of the nursery criterion in the school's arrangements is unfair. The Act requires the school to amend its arrangements as quickly as possible.
25. I turn now to the other aspects of the school's arrangements outlined above.
26. When I looked on the school's website in July 2013 the only admission arrangements visible were those for September 2013. The school has said in correspondence that it has not published its arrangements on its website in part because of the objection. Paragraph 1.47 of the Code requires that once admission authorities have determined their arrangements they must publish a copy of the determined arrangements on their website. A referral to the adjudicator is no reason not to publish. Moreover, the requirement in the Code is to publish arrangements once they are determined and the deadline for admission authorities to determine arrangements is 15 April. This was more than two months before the objection was made. The school has failed to conform to the requirements of paragraph 1.47 of the Code.
27. The school's arrangements provide that where the school is oversubscribed in any category, the determining factor will be geographical proximity and the arrangements explain how this will be measured. There is, however, no final tie-breaker to separate two final applicants in the – admittedly rare – circumstance that they should live the same distance from the school. It is a requirement of paragraph 1.8 of the Code that admission arrangements must include a tie-breaker to decide between two applications that cannot otherwise be separated. The school has agreed in correspondence with the Office of the Schools Adjudicator (OSA) that it will include a suitable final tie-breaker in its arrangements.
28. The school's " Category 1 (CLA)" in its oversubscription criteria is defined as:
- "Children Looked After. The Children Act 1989 defines a child who is 'looked after' as a child/young person who is accommodated by the LA or child/young person who is the subject of a full or an interim care order but now also includes all 'looked after' children or children who were previously 'looked after' but immediately after being 'looked after' became subject

to an adoption, residence or special guardianship order.”

29. I am afraid that this is not quite accurate. The Children Act definition does not include children who were previously looked after but immediately after being looked after became subject to an adoption, residence or special guardianship order. In short, a looked after child is not the same as a previously looked after child.
30. The Code requires that all admission authorities give joint first priority in their oversubscription criteria to both looked after and previously looked after children. I have no doubt that the school does in fact do this. However, its admission arrangements must reflect accurately the requirements of the Code. The Act requires that the school amend its arrangements accordingly.
31. The school uses a SIF. Paragraph 2.4 of the Code provides for schools to use these to request additional information that has a direct bearing on decisions about oversubscription criteria or for the purposes of selection by aptitude or ability. The issue of selection does not, of course, arise at St Michael's. The school needs to use a SIF to secure information to apply its faith-based oversubscription criteria and it is entitled to do this. However, the SIF also asks for a range of other information: the names of all parents/step parents/guardians living at the home address, names and addresses of parents living elsewhere and details of the dates of birth and school or playgroup attended by brothers and sisters. This information will either be available on the LA's Common Application Form (CAF) or is not necessary in order to apply the oversubscription criteria. The school has explained that it collects this information for the purposes of communication rather than the application of its oversubscription criteria and has already accepted that it could remove the request for information about the playgroup attended by siblings of applicants.
32. The SIF is part of the admission arrangements for the school and I find that so far as it requests information that is not necessary to apply the school's faith based oversubscription criteria as set out above, it does not conform to the Code. It is not an acceptable use of the SIF to collect information that is useful for future communication with parents. The Act requires the school to revise its SIF as soon as possible.
33. I want to draw the school's attention to some further provisions of its arrangements where I think it would be helpful to parents or others if the school made some small changes. First, the school's arrangements do not contain a statement that where it is not oversubscribed it will admit all those children who apply to YR. This is a requirement of the Code and it would be helpful for it to be stated in the arrangements. Second, there is no heading for the section of the arrangements dealing with oversubscription criteria. There is a list of categories of oversubscription criteria, numbered 1 to 7. It is implicit that 1 is the highest priority followed by 2 and so on. However, I think it would be helpful for the arrangements both to include a heading and to make

clear that the highest priority in the event of oversubscription will be category 1 and so on. Finally, the main body of the arrangements does not include a statement that children with a statement of special educational needs which named the school would be admitted as required by law. This is included in the footnotes, but I think it would be helpful for it to be featured in the arrangements themselves.

Conclusion

34. For the reasons given above, I find that the inclusion of priority for admission to YR for pupils who have attended the school's nursery is unfair. I find also that the school's arrangements more generally do not conform to the requirements relating to admissions with regard to the omission of a final tie-breaker, the definition of looked after and previously looked after children and some of the information requested on the SIF.

Determination

35. 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 governing body for St Michael's Church of England (VA) Primary School, Bishop's Stortford, Hertfordshire.

36. 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.

37. 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: [] September 2013

Signed:

Schools Adjudicator: Shan Scott

