

DETERMINATION

Case reference: ADA/2529

Objector: Hertfordshire County Council

Admission Authority: The governing body of Park Street Church of England, Voluntary Aided School, Hertfordshire.

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 governing body of Park Street Church of England Voluntary Aided School.

I have also considered the arrangements in accordance with section 88I(5). I determine that they 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 the strategy and policies manager of Hertfordshire County Council on behalf of the council, the objector, about the admission arrangements (the arrangements) for Park Street Church of England (CE) School (the school), a primary voluntary aided school for 3 to 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 group.

Jurisdiction

2. The admission 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 the 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 email of objection dated 28 June 2013;
 - b) the school's response to the objection and supporting documents;
 - c) the Diocese of St Alban's (the diocese) response to the objection and supporting documents;
 - d) the Hertfordshire Council's, the local authority (the LA) composite prospectus for parents seeking admission to schools in the area in September 2013;
 - e) maps of the area identifying the geographical spread of successful and unsuccessful applicants;
 - f) copies of the minutes of governing body meetings from October 2007 to May 2013 which contain reference to discussions on admission arrangements, and
 - g) a copy of the arrangements published on the school's website and on the LA's website.
5. I have also taken account of information received during and immediately after a meeting I convened on 22 August 2013 at the school. At the meeting the headteacher and chair of governors represented the admission authority, the LA strategy and policy manager represented the objector and the diocese of St Albans was represented by the admissions officer.

The Objection

6. The LA has objected in accordance with paragraph 3.2 of the Code which states that "LA must refer an objection to the Schools Adjudicator if they are of the view or suspect that the admission arrangements that have been determined by other admission authorities are unlawful." Following a determination by the adjudicator in August 2012 and a subsequent letter from the Secretary of State to the admission authority for this previous determination the LA contends that all other schools should adhere to the outcome of that determination.
7. The LA refers to the previous determination in its objection and suggests that the school does not comply with paragraph 1.8 of the Code which requires oversubscription criteria to be clear, objective and procedurally fair. It also refers to paragraph 1.9 (e) of the Code which prohibits giving priority to a child on the basis of any practical or financial support parents may give to the school or any associated

organisation.

Other Matters

8. I have also considered the arrangements in accordance with section 88I(5). There are three areas in which the arrangements do not comply with the Code; the position and its definition of children in public care or previously in public care, the absence of a tie breaker and the availability of the Supplementary Information Form (SIF).

Background

9. Park Street Church of England School is a voluntary aided primary catering for 3 to 11 year olds. The governing body is the admission authority for the school. The published admission number (PAN) for reception is 30. The school is inspected as a 3-11 provider by Ofsted and the Statutory Inspection of Anglican and Methodist Schools (SIAMS). The school is designated as a school with a religious character and the Christian ethos is reflected in the school's published information and on its website. The nursery forms part of the foundation stage provision and has 30 places. The admission arrangements for the nursery are the same as those for the reception class with the exception of the inclusion of nursery attendance in the reception criteria.
10. The nursery provides children with the entitlement of 15 hours free early education for 38 weeks of the year. There is no additional provision for nursery children at the school.
11. In addition to the LA's admission form parents are required to complete a Supplementary Information Form (SIF) and return it to the school at the same time as applying to the LA.
12. The arrangements for admission to reception were amended for the 2009 admissions to include a criterion relating to attendance at the nursery. This criterion has been in the arrangements since that time.
13. At paragraph 15 b of the Code it states that " Admission authorities **must** set (determine) admission arrangements annually. Where changes are proposed to admission arrangements, the admission authority **must** first publicly consult on those arrangements. If no changes are made to admission arrangements, they **must** be consulted on at least every 7 years."
14. At a full governing body meeting in October 2012 the minutes record discussion about arrangements but no agreement. The decision was referred to the resources committee meeting in November. The arrangements were determined at this meeting on 6 November 2013 and included an additional criterion at priority seven "Any other children where the school's supplementary information form has been completed"

15. These arrangements were included in the consultation of the LA's admission arrangements in November and December 2012 and no objections or comments were received.
16. The minutes of the governing body meeting held on 20 May 2013 refer to an email from the LA concerning the arrangements for 2014. I have had sight of this email. It reports that the LA has objected to the adjudicator over the nursery admission criterion. The email requested the governing body to take into account five other comments on the school's determined arrangements. Four of these were points of detail and the fifth referred to the use of the SIF as a priority. Paragraph 2.4 of the Code explains that the SIF should be used only for purposes of collecting other information. Its completion cannot be a condition within the priority criterion for oversubscription.
17. I have now seen the correspondence from the Chair of Governors to the LA on 23 May which indicates that, with the exception of the nursery criterion, the governing body changed the oversubscription criteria in line with all the LA's other recommendations. Both LA and school confirm that these are the determined arrangements for 2014 and they have now been posted on the LA's admission website. The school has indicated that it will also update the arrangements on their website as soon as possible.
18. The admission arrangements for admission to Year R for September 2014 record the following oversubscription criteria;
 - I. *Children in the care of a local authority (see note 1).*
 - II. *Children who have a compelling medical reason attested by the child's Consultant which makes attendance at Park Street School essential.*
 - III. *Children with a sibling who will be enrolled in the school at the time of admission. (See Note 2.)*
 - IV. *Children whose parents/guardians regularly worship at Holy Trinity Church, Frogmore and whose application is verified by the Vicar. (See Note 3)*
 - V. *Children who live in the ecclesiastical parish of Frogmore which includes Park Street, How Wood, Frogmore and Colney Street or the adjoining ecclesiastical parishes of St Stephens, St Peters, London Colney, Shenley, Radlett, Bricket Wood or Aldenham and whose parents/guardians regularly worship at any other Christian Church and whose level of attendance is verified by their Minister. (See Note 3)*
 - VI. *Children who have attended the Nursery at Park Street School.*
 - VII. *Any other children.*

Consideration of Factors

19. The objector refers to a previous determination and uses this as the reason for the objection. Adjudicators are required to consider each objection on its own merits and to study the arrangements in terms of their compliance with the Code. Every case is different in context and

arrangements and is determined as such. I have therefore considered this case afresh.

20. There is no reference in the Code to giving priority for attendance at particular nursery provision and this neither prohibits nor gives permission for nursery attendance to be included in the oversubscription criteria. Therefore I have considered the arrangements against the paragraphs cited by the objector and the general mandatory requirements of the Code. I have considered the arrangements in terms of paragraph 14 of the Code which states that “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.” I have sought to examine all the relevant factors.
21. In the school’s response to the objection the chair of governors reports that the school was severely criticised in the late 1990s by an Ofsted report which suggested that the nursery was not a fully integrated part of the school. The governors believed that the introduction of a criterion which identified nursery attendance emphasised the importance and integration of the nursery. She goes on to say that the governors “believe that including nursery attendance as a reception class admission criterion, but at a low priority supports the place of the nursery in the school without unduly discriminating against families who wish to send their children to the school from reception onwards.”
22. The Schools Admission Adviser for the Diocese of St Albans provided a response. He suggests that the criteria are clear, objective and procedurally fair and that the school makes it clear that a place at nursery does not guarantee a place in the reception class.
23. He suggests that the arrangements do not contravene the Code in terms of conditionality as, he suggests, every category places some degree of conditionality on the application and could be said to be disadvantageous to those given a lower priority, but argues that the arrangements are fair and do not breach the Code.
24. He goes on to suggest that paragraph 1.9e which does not allow priority to children on the basis of any practical or financial support does not apply to these arrangements. He states that the Code makes no mention of nursery attendance and no prohibition of attendance at one as an over subscription category and he concludes with a comparison of arrangements in other parts of the diocese and the many which have nursery attendance as one of the over subscription criteria and requests clarity on the issue.
25. I have considered paragraph 1.9e of the Code which states that admission arrangements “**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 any religious authority”.

The school admits children to the nursery on the basis of the free entitlement for each child of 15 hours nursery provision over 38 weeks a year. This does not involve the parents making any direct financial contribution to the nursery. I am of the view that in financial terms these arrangements should probably not be considered as contravening paragraph 1.9(e) of the Code in this respect.

26. I have considered the arrangements in terms of paragraph 1.8 of the Code which states that "Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair and comply with all relevant legislation including equalities legislation."
27. The chair of governors reports that the school "has been oversubscribed several times over the years". In 2012 there were 82 applicants for reception places with 37 first preferences. There were no looked after or previously looked after children or children with a compelling medical reason to attend. Twenty two siblings were admitted at priority three (siblings) and three children who attend the affiliated church were admitted. Of the nine applications from children who worship in other parishes five were offered places and four accepted. Four applications from children attending the nursery were originally not offered a place but subsequently one was admitted under a higher priority when a place was available.
28. In 2013 there were 65 applicants with 21 first preferences. This meant that all first preference applicants were offered a place and this included five children who attend the nursery and do not fulfil any of the higher priority criteria.
29. In summary, in 2012 no children were admitted under the nursery priority and in 2013 all those who applied were admitted and this included all first preference nursery children.
30. Forecasts of numbers of children in the area received from the LA indicate that there will be an increase in numbers seeking reception places in the area over the next five years.
31. I have studied the maps provided by the LA of where the children live who were allocated places in reception in 2012 and 2013. I have also looked at how this geographical spread relates to the different parish boundaries as indicated in the oversubscription criteria.
32. Without details of individual children it is not possible to determine accurately how many of the successful applicants, if any, are those who regularly worship at the affiliated church or those within the specified parishes. There were a number of unsuccessful applicants in 2012 who live close to the school.
33. When the school is oversubscribed and after the first five priorities have been fulfilled there may be places available. I am of the view that these places should be open to local families regardless of whether the child has attended the nursery. Some of these families may have chosen

not to attend the nursery, have arranged alternative nursery or pre-school provision for their children or have recently moved into the area. By specifying nursery attendance even as a lower priority within the oversubscription criteria such families are disadvantaged and I therefore conclude that this is not fair and contravenes the Code under paragraph 1.8.

34. Three areas of the admission arrangements were brought to the attention of the chair of governors at the meeting; the definition of children in public care or previously in public care, the inclusion of a final tiebreaker and the availability of the SIF. The definition of children in public care or previously in public care is provided below the admission arrangements and it would be clearer for prospective applicants if the definition is stated in the oversubscription criteria.
35. The Code requires admission authorities to include a tiebreaker so that in the event of two children living the exact same distance from the school there is a clear process for deciding who should be allocated a place. No such tiebreaker is currently included in the admission arrangements. This addition is needed to fully meet the requirement in paragraph 1.8 of the Code which states 'Admission arrangements must include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated'.
36. Within the published arrangements is reference to a SIF. I have been unable to find this form for reception admission either on the school's website or on the LA's website. This unavailability contravenes the Code at paragraph 14 which states that "Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated".
37. At the meeting, the chair of governors agreed to a clarification of the admission arrangements so that they comply fully with the Code in respect of the tie breaker. She indicated that signposting to the SIF would also be included. She also agreed to ensure that minutes of future meetings where the arrangements are determined will be clear and unequivocal, that the governing body will request the LA to carry out consultation on their behalf for the arrangements for admissions in 2015 and to arrange for the LA to offer training on admissions to the governing body.

Conclusion

38. Giving priority for nursery attendees provides those children with an advantage; it also confers future advantage on younger siblings. It consequently disadvantages those parents who choose not to or are not able to use the school's nursery provision, have recently moved into the area or would like to use the provision but are not allocated a place even though they may live nearer to the school. For this reason I consider this to be unfair and contrary to paragraph 14 and paragraph 1.8 of the Code.

Determination

39. 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 of Park Street Church of England, Voluntary Aided School, Hertfordshire.
40. I have also considered the arrangements in accordance with section 88I(5). I determine that they do not conform with the requirements relating to admission arrangements.
41. 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: Mrs Ann Talboys