

DETERMINATION

Case reference: ADA/002490

Objector: A group of parents

Admission Authority: Stockport Metropolitan Borough Council

Date of decision: 22 November 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 Stockport Metropolitan Borough Council for admissions to Tithe Barn Primary School for admissions in September 2014.

I have also considered both the 2013 and 2014 arrangements in accordance with section 88I(5) of the Act and have found there are other aspects which do not conform with the requirements relating to admission arrangements in the ways set out in paragraph 49 of this adjudication.

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 make any remaining revisions to 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 a group of parents about the 2014 admission arrangements (the arrangements) for Tithe Barn Primary School (the school). These arrangements were determined under section 88C of the Act by Stockport Metropolitan Borough Council (the council) which is the admission authority for the school. The objection relates to the oversubscription criteria which prioritise all siblings before children living in the school's catchment area.

Jurisdiction

2. The objectors submitted an initial objection to the determined arrangements on 24 June 2013 and further details in a lengthy document sent on 27 June 2013. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and that it is within my jurisdiction to consider this objection.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

The documents I have considered in reaching my decision include:

- the objectors' form of objection sent by email on 24 June 2013;
- a lengthy information pack provided on 27 June 2013 supplementing the objection including a schedule of complaints, a narrative document and relevant information, data and other information in appendices 1 to 21, and the determinations of 2010 and 2011;
- an email response by the school on 16 July 2013;
- an email response by the council on 19 July 2013, including a copy of the determination notice and a catchment area map;
- an email response by the objectors dated 25 July 2013;
- additional comments emailed by the council on 31 July including a survey report of the school site;
- further email responses by the objectors dated 5 August 2013;
- further email responses by the council dated 8 August;
- comments from the Chair of Governors with a copy of the minutes of the governing body meeting dated 15 May 2013 by email on 14 August 2013;
- further information and statistics provided by the council on 10 September 2013 subsequent to the meeting, including a copy of the council's press release on 9 September 2013 regarding proposed primary school expansion in the area and a map showing the location of the proposed new build;
- a copy of the press release from the local newspaper provided by the council on 12 September 2013;
- an email response by the objectors dated 23 September 2013;
- a copy of the objectors' presentation notes (used at the meeting on 4 September) by email on 7 October 2013;
- confirmation by the council of the version of wording that was determined in the 2014 arrangements by email on 1 November 2013; and
- the minutes of the Admissions Forum dated 21 March 2012, made available by the council on 7 November 2013;
- a copy of a letter to the objectors dated 7 June 2013, sent by the council on 13 November 2013; and
- the public document pack for the council's Executive Meeting on 28 May 2012 and the minutes of that meeting, sent by the council on 13 November 2013.

4. I arranged a meeting with representatives of the school and the council at the school on 4 September 2013, and I have taken account of the information I received during the meeting and subsequent correspondence.

The Objection

5. The objection relates to the 2014 admissions arrangements and the effect of those arrangements on children living in the catchment area when the school has a published admission number (PAN) of 30 and the arrangements give priority to out-

of-catchment siblings over children in the catchment area without an older sibling at the school. The objection was made by a group of 18 parents living in the catchment area whose children had not been allocated a place at the school for September 2013. At the meeting on 4 September 2013 the objectors confirmed their awareness that matters related to the allocation of reception places under the 2013 arrangements are beyond the scope of this determination.

6. In the meeting the objectors also confirmed their understanding that all the concerns identified in their objection relating to maladministration by the council are also beyond the scope of this determination about the 2014 determined admission arrangements, but may be within the remit of the Local Government Ombudsman.

Background

7. Tithe Barn Primary School is a popular community primary school for boys and girls aged 4 to 11 years in the Heatons area of Stockport. The school has a PAN of 30.

8. The admission arrangements for the school have been the subject of determinations in 2010 and 2011 under the previous Code. As the previous Code indicated that siblings **should** be enabled to attend the same primary school, the oversubscription criteria had prioritised children with a sibling at the school before children resident within the catchment area, with proximity as the tie breaker. However, there had been concerns for several years that a number of children without a sibling could not access a place at their catchment area school, which was often the nearest school to their home. At the same time, those children were also less likely to obtain a place at another nearby school, even if it was their first preference, because they were not in that school's catchment area, and also lived further away from the school than local children. After consultation, the council determined the 2012 arrangements for community schools with a change to the oversubscription criteria such that the sibling priority was split so that catchment area children without a sibling at the school were prioritised before children with a sibling but resident outside the school's catchment area, but after catchment children with a sibling.

9. However, the change to the priority for siblings, together with matters related to the council's consultation procedure, became the subject of adjudication in 2011 about the admissions arrangements determined for 2012. The council had taken the view that in-catchment applications should be ranked higher than those from out-of-catchment siblings because the disadvantage suffered by displaced in-catchment applicants would be greater than that experienced by out-of-catchment siblings. However, out-of-catchment families were not made explicitly aware of the lower priority when selecting the school again for younger siblings. As there was a potential disadvantage to out-of-catchment families as a result of the change to the sibling priority, the adjudicator used his power under section 88L of the Act to amend the arrangements, introducing a transitional arrangement to benefit those whose first child had joined reception class in September 2008, 2009 and 2010. Consequently the oversubscription criteria were modified so that those children with a sibling who joined the reception class in September 2008, 2009 or 2010 and will still be at the school at the time of admission would have a higher priority than catchment area

children without a sibling. However, I note that the adjudicator did not use his power under section 88L and regulation 33 of The School Admissions (Admissions Arrangements) (England) Regulations 2008 to fix the arrangements for a two year period. Therefore the determination applied to 2012 only. Section 88L of the Act has since been repealed by the Education Act 2011.

10. Despite the adjudication in 2011 not applying to arrangements other than those that had been determined for 2012, the council published a determination notice with the 2013 arrangements for community schools which stated that *‘a change to the 2012/13 oversubscription criteria has been imposed on the Local Authority (LA) by the Office of the Schools Adjudicator (OSA) for 2013/14. The LA changed the order of priority given in the oversubscription criteria for siblings living outside the catchment area ... for admissions in 2012/13. The OSA, after hearing representations from parents and the LA ruled that an additional category should be put into the oversubscription criteria as a transitional measure. The category will come **after** ‘children with a sibling living in the catchment area’ and **before** ‘Children living within the catchment area’. In effect these measures, known as ‘Transitional Arrangements’ will relate to those children whose sibling was the first child of the family, and who was admitted to the school in the following academic years; September 2008, 2009, 2010. Once the eldest child (admitted 2008, 2009, 2010) has left the school the subsequent siblings will revert to the normal sibling status.*

Consideration of Factors

11. The objectors are fully aware that their applications for a reception place at the school for September 2013 will not be taken into account in this adjudication that relates to the 2014 arrangements, and that any concerns they have expressed about maladministration may be matters for the Local Government Ombudsman. However, as the 2013 arrangements have been brought to my attention, then in accordance with section 88I(5) of the Act, I have decided to consider them as the 2013 arrangements apply to any waiting list held by the school that has to be kept for at least the autumn term, and because the background is relevant to whether the 2014 arrangements comply with the general duty of “fairness” required by paragraphs 12, 14 and 1.8 of the Code.

12. In the light of their experience of the 2013 admission arrangements and procedures, the objectors expressed their many concerns about the 2014 admissions arrangements in a lengthy and comprehensive document. Apart from matters related to maladministration which are beyond the scope of this determination, I consider that the concerns raised by the objectors fall into five main areas:

- the significant increase in the number of siblings including the consequential displacement of catchment children and the impact on their younger siblings;
- the unreasonableness of the catchment area and the PAN given the number of children living in the area;
- the operation of the waiting list;
- the lack of relevant information about how places have been allocated in previous years; and
- the lack of spare capacity to be able to offer parents a realistic choice of primary school.

13. In an email dated 14 October 2013 I alerted the council to the variations in the wording of the 2014 arrangements in several key admissions documents published on the council's website. The council confirmed by email on 1 November 2013 that the determined wording was that published in *"School Admissions Policy and Procedures 2014-15"*, that the intention was not *'to create any kind of ambiguity so as to mislead or cause misinterpretation'*, and that the *'inference from both criteria are identical'*. The council explained that the purpose of the amended criteria in the booklet *"Applying for Primary School 2014-15"* was to provide *'clarity to a wide audience so language and presentation is used differently to illustrate key points and to make the booklet/website information more parents friendly while not affecting the actual meaning of the determined criteria. This was done following input from heads and other colleagues'*. To avoid confusion, the wording of admission arrangements needs to be consistent throughout the council's website and documentation. In my view the wording and presentation of admission arrangements in future years should be compiled to be parent-friendly at the outset so as to avoid the need for different versions of key information. Nevertheless, the 2014 arrangements published in the policy document are similar to the 2013 arrangements, and are as follows:

"After placement of pupils who have a Statement of Special Educational Needs which names the school, places will be allocated in the following order up to the Published Admission Number (PAN) of the school:

- a) Children in Public Care (looked after children) and those children who have been adopted immediately after being in public care;
- b) Children considered to have highly exceptional medical/social reasons;
- c) Children resident within the catchment area of the school with a sibling at the school at the time the younger child starts;
- d) *Children resident outside the catchment area* of the school with a sibling* at the school whose 1st child was admitted to the school in September 2008, 2009 & 2010 only;*
- e) Children resident within the catchment area* of the school;
- f) Children resident outside the catchment area of the school and with a sibling at the school at the time the younger child starts;
- g) Other applicants, in order of straightline distance measured between home and the school; and
- h) Applications received **after** the closing date ordered by the criteria detailed at A-G above."

The effect on admissions of the significant increase in the number of siblings

14. The objectors assert that the growth of the sibling cohort was foreseeable and that the council therefore failed to take adequate steps to ensure reasonable provision for children in the catchment area. The objectors have shown that, over the last six years, the number of siblings admitted to the school has increased as follows:

The number of siblings admitted to the school					
2008	2009	2010	2011	2012	2013
13	11	12	12	17	21

As the school has a PAN of 30, the objectors have expressed concern that in September 2013, 21 of the 30 places available in the reception year were allocated to siblings, which left very few places available for the 27 non-sibling applicants resident in the catchment area. Consequently, 18 children were not allocated a place at the school, which was more than two-thirds of the non-sibling catchment children who applied. These displaced non-sibling catchment children then became the lowest priority for all the other Heatons schools, and many of them were not offered a place at any of the other schools in the Heatons area. The objectors argue that *'the school and the catchment area are failing to serve the community it is meant to serve. It has become a sibling school'*.

15. The objectors are particularly concerned that the displacement of non-sibling catchment children will also have longer-term consequences for their families. The objectors explain that all but one of the other six Heatons area schools either fill from catchment or have only a few additional places so that, in future years, the younger siblings of the displaced catchment children would also be disadvantaged as they would not be a catchment sibling (criterion c) nor would they be resident in the catchment (priority e). Accordingly, any younger children not allocated a place at the same school as their older sibling (criterion f) would be particularly disadvantaged in terms of straight line distance (criterion g), as the only schools with spare places are at the other end of the Heatons area from Tithe Barn Primary School and so their home would be further away than that of other applicants. As a consequence, it is unlikely that these younger children would be offered a place at the same school as their older sibling, and it may be that they would not secure a place at any other of the Heatons schools, so the displaced families might end up with children at two or even three different schools, probably quite some distance apart.

16. The Council explains that the use of the *'sibling priority in its oversubscription criteria has evolved from good practice suggested in the 2007 Code. The original criteria didn't distinguish between catchment area siblings and those resident outside the area'* but that analysis of data for the following two years *'showed an increase in out of area siblings which would inevitably lead to displacement of catchment area children without siblings. To halt this year on year increase, the sibling criterion was separated giving priority to catchment area children with or without siblings ahead of out of area siblings'* and that as a result of *'a subsequent OSA determination the 'transitional sibling' criterion was included.'* The council states that *'priority to sibling applicants will inevitably increase over time'*. The objectors raised the question

whether the situation will be repeated in 2014 to which the council responded in an email dated 8 August 2013 that as soon as any further appeals are completed, it would be *'researching what siblings are likely in the future and evaluating the pressures on the school anew.'*

17. I note that the previous Code stated that siblings **should** be enabled to attend the same primary school. However, the current Code came into force in February 2012 and is not prescriptive about priority for siblings: at paragraph 1.9 the Code clarifies that it is for admission authorities to formulate their admission arrangements and paragraph 1.11 indicates that any priority for siblings would be a matter of choice for the admission authority. Before determining its arrangements for 2015 the council may wish to review and consult on its arrangements in respect of maintaining any priority for siblings.

The unreasonableness of the catchment area and the PAN for the number of children living in the area

18. The objectors refer to the suggestion made in the 2011 determination that the council review the overall approach to primary catchments as part of a more lasting solution. The glossary to the Code makes clear that a *'catchment area is part of a school's admission arrangements and must therefore be consulted upon, determined and published in the same way as other admission arrangements'*. The Code at paragraph 1.14 states that catchment areas *'must be designed so that they are reasonable and clearly defined'*, but paragraph 1.14 reminds everyone that catchment areas *'do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school'*.

19. The objectors assert that after the siblings had been allocated reception places at the school for September 2013, the remaining places were allocated to non-sibling catchment children living closest to the school. As the final, thirtieth place was allocated to a child living only 0.26 miles from the school (although the council insists the distance was 0.31 miles), those catchment children living further away became the lowest priority for all the other Heatons schools, and as all but one of the other schools either fill from catchment or have only a few spare places, displaced catchment children were allocated a place on a "nearest available school with room" (NASWR) basis. Accordingly, most of the 18 displaced catchment area children were not offered a place at any of the other Heatons schools. However, at the meeting on 4 September 2013 the council explained that those figures were only representative of the situation at the initial offer stage of the allocation process in April. As figures change throughout the admissions process, by June there had been only 15 pupils on the waiting list, and not all of those children had been allocated a place on a NASWR basis because some had expressed alternative preferences and others had the opportunity to express additional late preferences for places in the Heatons area.

20. The council pointed out that those parents who expressed the maximum number of six preferences *'gave themselves the greater opportunity of being allocated a place in the locality from the outset. Those who expressed a lesser number of preferences took a little longer to accommodate'*. The council explained further that children who were allocated a place on a NASWR basis were advised of availability and waiting lists for schools and were then given the opportunity to put in

late preferences, which the council acknowledges is not standard practice, so that parents would secure a school place in the Heatons area by preference rather than through allocation by the council. Accordingly the council considers it has complied with its duty to provide a school place for every child in the Heatons area who required one. However, the objectors stated that the council's position is '*misleading*' because they were not made aware of any opportunity for late preferences but were advised their names could be added to the waiting lists for other schools. Only a few of the 18 displaced catchment children obtained schools that were in their original choices, and the vast majority have had to simply take the first alternative school offered to them.

21. The objectors argue that the failure of more than two-thirds of the non-sibling catchment children to be allocated a place at their catchment school, together with the fact that the majority of these children were not offered a place at any of the other schools in the Heatons area, demonstrates there is inadequate provision for catchment children. In addition, the objectors suggest that the council has failed to take into account that the school's catchment area is bordered by Manchester City Council on the one side, and is limited further by the M60 motorway and the A6 trunk road between Manchester and Stockport, so that many of the displaced catchment children did not have practicable access to alternative schools within close proximity by straight line distance. The objectors suggest that as the last change was about 20 years ago, the school's catchment area should be reviewed as it is not serving the current community around the school.

22. The council stated that in response to the previous determination, a specific question regarding school catchment areas in the oversubscription criteria had been included as part of the consultation for the 2013 admissions arrangements. The council explained that the consultation ran from 3 January until 28 February 2012 and was open to all parents, schools, governors and interested parties. In a report prepared for the council's executive meeting on 28 May 2012, the council states that the '*consultation was publicised through a variety of channels including the council's website, emails to key stakeholders, all routine channels to schools and through schools to parents. The consultation also included a series of events in libraries and other public sites which offered stakeholders the chance to speak with admissions officers about the proposed changes.*' The council added in the meeting on 4 September 2013 that information about the consultation had been included in the civic review documentation distributed to every household in Stockport.

23. The report to the council executive recorded that the response to the consultation was a significant improvement on previous years. Responses were provided on paper and on-line, and there were 247 responses to the admissions arrangements overall, including 188 to the specific question on school catchment areas. The report also noted that the Admissions Forum on 21 March 2012 agreed that the current catchment policy should be retained. The council assessed the findings as showing '*clear support for the retention of catchment areas as oversubscription criteria for schools admissions. Almost 80% of the respondents want to retain catchment areas. The profile of these respondents shows that support for catchments is broadly spread across all groups.*'

24. In response to the same statistics, the objectors put the contrary view, that the consultation was ineffective because so few responses were received from the entire population of Stockport. The objectors argue that the council only '*actively sought the views*' of those currently involved in the school system who would benefit from the status quo, and not the views of putative parents who might have had a very different view. In addition, as the questions posed in the consultation asked only whether catchments should be retained or not, the results may have been different had the council pointed out that some schools are not able to accommodate all the children in their catchment area.

25. The report to the council's Executive Meeting concluded that '*the perception is that catchment areas provide a number of important functions including: building and maintaining community identity; protecting Stockport school places for Stockport residents; and allowing primary and secondary schools to develop meaningful relationships to enable smoother and more supportive transfer arrangements*'. The minutes of the executive meeting on 28 May 2012 confirm that it was agreed that the current catchment areas as an oversubscription criteria for schools admissions would be retained in the 2014 arrangements. I therefore surmise that the 2014 arrangements were actually determined at that meeting on 28 May 2012, after the deadline. The Code at paragraph 1.46 makes clear that '*all admission authorities **must** determine admission arrangements by **15 April** every year, even if they have not changed from previous years and a consultation has not been required.*' Although the arrangements appear to have been determined late, they were decided after appropriate consultation, and so I consider them to be lawful arrangements.

26. Nevertheless, it is clear from the minutes of the admissions forum dated 21 March 2012 that there had been a consultation and that the forum resolved to support the recommendations as detailed in the report prepared for the executive meeting. The executive on 28 May 2012 agreed that the catchment areas should remain the same as they were '*well established and on the whole understood by parents and the local community*'. The council explains that catchment figures will be different on an annual basis due to changes in the pattern of preference for a particular school which can vary from year to year. The council also comments that simply increasing / reducing the size of the catchment area would not eradicate the underlying need for additional places in the Heaton area. Consideration of a move from catchment areas to distance may indeed put more pressure on Tithes Barn admissions and Stockport parents in the surrounding area of the school by the possible admission of more Manchester families.

27. However, the objectors argue that the decision not to change the catchment areas does not appear to have been based on any analysis of the changing demographics or the increasing birth rate. The objectors argue that too many local families are already allocated a school place on a NASWR basis, and as the council has approved the development of more than 200 new houses in the school's catchment area, the objectors anticipate the school will be continue to be oversubscribed. As noted in Appendix 12, the council has admitted this is likely to be problematic as forecast figures suggest at least seven to nine extra pupils each year will be added to the school's catchment area. Given the rising birth rate and the increase in newcomers to the area, the objectors suggest that as the majority of non-sibling catchment children were not allocated a place at the school, the PAN is

unreasonable. Given the council's recent decision to approve an increase in the number of homes within the catchment area, it might be considered unreasonable if the council were to refuse to review the catchment area and the PAN so as to put in place appropriate provision for children in the community local to the school.

28. The council recognises that no set of oversubscription criteria can be perfect for every applicant. In compliance with the Code no places can be guaranteed at any school but catchment areas do afford some degree of protection, particularly where catchment areas border other Local Authority (LA) areas. Without the relative protection of catchment areas all applications would be applied on distance which the council believes could lead to more allocations for children from outside the Stockport area. In view of the limitations associated with the school site, the council explained it has worked with neighbouring schools to create additional spaces within the locality of the Heatons area, and that a more radical review of catchment areas would not yet be appropriate until all avenues of expansion have been explored. The council advised further that *'changing the catchment areas is a long process ... to allow full consultation and implementation (noting the long lead in time for primary school places) we would need to allow 3 years'*. I agree that starting a thorough review of catchment areas now would not assist the 2014 admissions process. However, in the consultation process for the 2015 arrangements, the council may wish to take the opportunity to review catchment areas again, and to provide further information about those schools not able to accommodate all the children in their catchment area.

29. The objectors accept that living in a catchment area does not guarantee a place at a school but contend that oversubscription criteria *'based on catchment areas does raise a reasonable expectation that a child will have a reasonable chance to get in. When less than 50% of non-sibling children get in that reasonable expectation is not being met'* and so *'the catchment area has failed'*. However, the council responded that as there are 84 infant or primary schools in Stockport, data about one school is not persuasive that the catchment system is broken. *'Across Stockport there is considerable cross catchment area flow, as to be expected in an urban area, and in the Heatons area the distance between adjacent schools is relatively small.'* The council asserts it has spent a great deal of money on creating 1,140 additional places across the seven primary years and has more places targeted by 2016. However *'PANs for our schools have not changed as rapidly as the net capacity that we are changing through our enlargement programme'*. The council confirms that when numbers settle, PANs will be reviewed and fixed.

30. I have included the extensive comments and views of the council and the objectors which illustrate the attention both parties have given to the matter of catchment areas for schools. I note what the council says about catchment areas being well established and understood by parents and the local community. It does not seem to me that there is an issue about whether or not to have a catchment area for the school, rather the problem arises when the entirely reasonable expectation of having a high chance, but not a guarantee, of a place at the catchment area school is lost because of a higher priority for siblings outside the catchment area.

The operation of the waiting list

31. The Code at paragraph 2.14 states that the admission authority '**must** maintain a clear, fair and objective waiting list for at least the first term of the academic year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria. At the meeting on 4 September 2014, the objectors reiterated their concern about the administration of the waiting list. The council outlined the process in general but declined to discuss individual applications. As the administration of the waiting list is beyond my jurisdiction, it would not be appropriate for me to give this matter any further consideration.

The lack of information about how places have been allocated in previous years

32. At the meeting on 4 September the objectors reiterated their request for the council to '*publish data demonstrating how many catchment children got into any particular school*' as this would help '*parents in assessing which school they apply to, and in what order*'. The objectors suggested that showing how places had been allocated for each of the oversubscription criteria would help prospective parents to be better informed about the likelihood of obtaining a place at particular schools and make their preferences accordingly. The objectors commented that some of the displaced families would not have '*wasted their first preference*' if they had known there was little likelihood of their first child getting a place. Copies of correspondence supplied in Appendix 11 show that the council knew it was tight in terms of spare capacity especially in the Heatons and the objectors argue that parents had no way of knowing this before the deadline for 2013 applications. As the council has stated that 'this coming round (2014) will be tighter' the objectors assert it would be unreasonable for the council not to make the historical information available.

33. At the meeting I confirmed that information about how places had been allocated in previous years would also be helpful to me in understanding the effect of applying the oversubscription criteria. Schedule 2 to The School Information (England) Regulations identifies the information that must be included in the composite prospectus and section 13(b) specifies the publication of the number of preferences expressed for places at the school for the previous admission year. In the meeting the council agreed to publish on the website how places were allocated to primary schools.

34. Since the meeting, the council has published on its website for the years 2009 to 2012 for each primary school, and I have summarised the information for Tithe Barn Primary School below:

Year	Admission Limit	Places Allocated	Order of preference			
			1st	2nd	3rd	none
2009	30	31	30	1	0	0
2010	30	31	31	0	0	0
2011	30	36	36	0	0	0
2012	30	30	30	0	0	0

35. I acknowledge that the council has also provided extensive historical data on its website related to “*across catchment boundary flow*” but this information is less useful to parents in deciding their school preferences than information about how places in the previous year were allocated by oversubscription criteria, so that parents would be able to judge the likelihood of their child being allocated a place at the school. For parents to have a reasonable chance of understanding how places at the school are allocated they need to be able to see the allocations against each oversubscription criterion.

The lack of spare capacity to be able to offer parents a realistic choice

36. The council explains that the ‘*planning of school places can never provide an exact match for parental preferences*’ but ‘*the analysis of known factors enables us to predict to a certain degree the number of pupils expected in future cohorts and an indication of the numbers in particular areas of the Borough from live births data. This does allow us to undertake a degree of informed planning. Based upon the trend of increased numbers of pupils entering primary education we have extended some schools to ensure the Council fulfils its statutory duty to ensure there is a school place for every child whose parents want one. However, this may not always be at specific preferred schools. What the statistics cannot give us is the proportion of children within a catchment area whose parents will state a preference for a particular school.*’

37. It is evident that Stockport generally, and the school in particular, has experienced a rising demand for primary school places as confirmed by the live births data in the table below, supplied by the council after the meeting on 4 September 2013. Throughout the period from 2006 to 2012 it can be seen that the number of live births in the catchment area has generally exceeded the PAN for the school.

Trends in Live Birth Figures / NHS Stockport			
Year	Tithe Barn Catchment	Heaton Cluster Group	Total Stockport
2005 - 06	27	354	3,161
2006 - 07	35	359	3,336
2007 - 08	35	338	3,400
2008 - 09	41	356	3,368
2009 - 10	23	382	3,371
2010 - 11	34	359	3,456
2011 - 12	34	397	3,483

Given that in the same period there has also been growth in the number of incoming families, and that a new housing development has been approved within the school's catchment area, it seems to me that the lack of places at the school for local children without a sibling will be repeated in 2014 and will continue to deteriorate for the next few years unless urgent action is taken. I also note that the new housing development may impact on the availability of places at the school as early as September 2014.

38. The council has advised that for parental choice it would seek to have about 8% spare capacity but copies of correspondence provided in Appendices 9 and 12 indicates that the council was unable to meet the recommended 8% spare capacity in 2012 and also the lower target of 5%. The council reported that in September 2012 there was only 2% spare capacity across the borough and that some areas (namely the Heatons) had no spare places. From spreadsheets supplied by the council on 25 July 2013 it appears that there were only 68 unfilled places in just eight of the infant and primary community schools in Stockport, and that around 300 more places have been allocated in excess of the total combined PANs. The council confirmed in an email of 1 May 2013 supplied in Appendix 14 that *'Stockport has a statutory duty to ensure there are sufficient places and we have always met this obligation, however the school places we can now offer are not always at the nearest schools'*. The objectors argue that without sufficient spare capacity in the Heatons area, parents do not have a realistic choice of primary school. The council agrees that *'there remains much to be done to reach the 5% or more spare places we see as optimum to allow for the system to function well. We continue to work towards that goal.'*

39. The objectors observed that if the 2013 cohort was a "bulge year" then provision for the extra catchment children could have been made through use of a temporary unit or reconfiguration of the school accommodation, but if it is part of a continuing trend, then the council has failed to make proper provision for the 2014-2015 intake. The objectors presented a comprehensive report to the council at a meeting on 30 May 2013, proposing two solutions: the use of a temporary unit; and reconfiguration of the ICT suite in the current school accommodation. The council acknowledged that temporary accommodation can be useful in addressing short term pressures, but a number of severe limitations precluded the proposal to increase the number of places available including that the school is in a conservation area, the playing field is designated as local open space, the likely traffic issues as a result of the additional numbers, and the poor access to the front which would make bringing a temporary unit onto the site difficult. The council considered it unlikely that planners would agree to a temporary building on the site. In addition, the ICT suite being on two levels makes it unsuitable for reconfiguration and the governing body had also expressed reluctance to lose the ICT suite as it is considered to be central to the delivery of the curriculum. The council confirmed that there were no plans in place to increase the number of places available at the school site and that the greatest limiting factor had been that *'the school itself has rejected the enlargement'*.

40. The minutes of the governing body meeting on 15 May 2013 confirm that the objectors made a presentation to the school governors outlining the impact on the school were additional school places to be made available for all the catchment children. Before the discussion the chairman reminded governors that:

- *'the local authority had the decision-making powers in respect of admissions, and it was not a governing body function. The school had to cater for pupils admitted by the Authority under published admission criteria and, exceptionally, the Appeals Panel;*
- *the school was on an extremely constrained site in the physical sense and in the planning sense. The view of the Local Authority was that it could not realistically*

expand the School even if it wished; the only way would be to demolish the School and rebuild it on 2 storeys, which raised the obvious question of what would happen to the children in the intervening two years;

- *The prospective parents' paper very understandably concentrated on the here and now. However, for the School it would be a minimum of a 7 year commitment and, with a sibling 'tail', possibly 10-11 years.'*

The governing body expressed immense sympathy for the parents and children involved but decided not to agree with the proposition that the school should offer to admit the extra children.

41. In a letter dated 14 August 2013 the chairman of governors expressed concern about the *'increasingly abrasive exchanges between the objectors and the local authority'*. He explained that *'the view of the School Governors, in rejecting the proposition of the objectors simply to admit their children, is very clearly predicated on a deep concern for the education of the existing 215 pupils in the School'* He comments that the very recent acquisition of ICT equipment *is very much additional to provision in the ICT suite, and not a replacement for it. Notwithstanding this, the ICT suite is totally unsuitable for reception age children to use as a permanent teaching space. It is at first floor level accessed by a flight of stairs; it is mezzanine in style such that any noise would carry to the teaching space below; it would leave any such children detached from their peers and the facilities provided for them, such as secure outdoor play and integral toilets; it was recently adjudged by the Fire Safety Officer to be the highest risk area in the School because of its single staircase access/exit to an internal area.* The chairman of governors cautioned against an *'overly simplistic approach to very complex accommodation, educational, managerial, financial and practical issues which the school would face'* if governors were to accede to the accommodation of additional pupils.'

42. At the meeting on 4 September the objectors observed that a number of other local schools are in the process of being, or have already been, expanded. The council explained it has had meetings with several schools in the area with a view to possible expansion projects where this is possible and these were at the early stages of consultation. However, the council did allude to the fact that some of their plans were not yet in the public domain.

43. In an email on 10 September 2013, the council advised that since the meeting at the school on 4 September 2013 *'we have advanced our plan to create more primary capacity in the Heatons. This will involve the creation of a new large primary school building on Peel Moat site to which we are inviting the 1 form entry Tithe Barn Primary to relocate. We anticipate that, should the school take up the offer to relocate, then the 3 form entry building will open in September 2015. This is when we anticipate numbers of pupils appearing via the new house building that is starting now in the area. There will be a need to reassess at least 3 if not more catchment areas in response to this change, and consult formally on the this matter, as well as a formal consultation over the enlargement of the school'*.

44. The council provided a copy of the press release dated 9 September 2013 which explained that the council *'faces a challenging position in securing additional primary school places for children in the borough like many other local authorities*

across the country. The Council is committed to tackling the issue and in response to pressures in the Heatons area has been considering a range of options to meet the rising demand for places ... the area is currently seeing the benefit of additional investment which will bring more housing to the area. An increase of people living in the Heatons along with rising birth rates will mean that more school places are needed in the future. The Peel Moat Recreation Centre site provides an ideal location for primary school provision and ... one of the options being considered is that Tithe Barn Primary School should be moved into new, larger buildings at Peel Moat which would allow this popular and over-subscribed school to expand ... The Council had previously agreed to release part of the site for residential development, however, we have a statutory duty to ensure there are sufficient school places for our children and this must and will take priority'. In the local newspaper on 11 September 2013, it was reported that more than 2000 school places would need to be created in Stockport, with the biggest problem in the Heatons, where more than 200 new homes are being built.

45. The council advised further on 7 October 2013 that an extension to the housing development has been agreed and confirmed: *'We are of course advancing plans for a new 3 form entry primary school next to that very estate, and as you know we are inviting Tithe Barn Primary School to take up residence there. The plan will inject an additional two forms of capacity into the area of the Heatons. This is at considerable cost to the council of £7.6million. We will be looking at where the pressure points are in the 2014 Reception round when the closing date for applications is closed'*. The council assured again that it has *'never failed in its statutory duty to offer a place but in the current circumstances that place may not be where parents wish their child to attend ... Whatever happens and whatever we respond with there has always been and there will continue to be schools that are oversubscribed, even from within their own catchment area - and that is why we need an oversubscription criteria ... our statutory duty is to provide an offer of a place and we continue to succeed on that responsibility'*. The council noted that *'across the borough this 2013 round we have increased the number of first preference we have been able to meet ... to 89.9 % [September 2013] which shows an approximate 1.7% increase from September 2012 (88.2%)*. The council supplied the table of data shown below (though there may be slight anomalies due to rounding up figures):

% of parental preferences met for reception primary intake					
	2009/20	2010/11	2011/12	2012/13	2013/14
1 st Preference	91.17	91.11	88.94	88.2	89.9
2 nd Preference	5.3	4.63	5.68	5	5.5
3 rd Preference	1.21	1.82	1.6	1.3	1.8
4 th Preference	-	-	-	0.7	0.7
5 th Preference	-	-	-	0.1	0.4
6 th Preference	-	-	-	0.0	0.2
No Preference	2.31	2.4	3.78	4.8	1.5

46. I note what is said about the possible ways of providing additional places. However, the matter for me to consider is the arrangements determined for 2014 and the compliance of these arrangements with the Code.

47. At the meeting on 4 September 2013 I also explained that, in addition to the issues raised by the objectors, I have a duty to consider the “fairness” of the 2014 arrangements as a result of paragraphs 12, 14 and 1.8 which import a general requirement that the 2014 admissions arrangements must be fair. I consider that the key question is “what is the likelihood of a first born child living in the catchment area being allocated a reception place at the school in 2014?” It can be seen from the 2013 allocations figures discussed above that of the 30 places available in the reception, only nine places were available for the 27 non-sibling applicants resident in the catchment area so more than two-thirds of the first born catchment children who applied were unsuccessful. These displaced children then became a low priority for places at the other oversubscribed schools in the area, and any younger siblings would be similarly disadvantaged in future years. Given the rise in birth and the new housing development within the catchment area of the school, it is likely that the reception places in the Heaton area generally, and at the school specifically, will be under even more pressure and I note that the council has already stated that *‘this coming round (2014) will be tighter’*. From this information it would seem that a first born child living in the catchment area will have little chance of being allocated a reception place at the school in 2014. This is unsatisfactory since it goes against the whole reason for having catchment areas.

48. The council included a transitional arrangement in the oversubscription Arrangements because it thought it was still bound by the 2011 determination made under the previous Code for admissions in 2012, and I recognise that the council may have opted to retain the arrangement to avoid out-of-catchment families having children at different schools. However, out-of-catchment families electing to apply to Tithe Barn Primary School already have a high priority at their own catchment school whereas the pressure on reception places at Tithe Barn Primary School is such that there are insufficient places for catchment children unless they already have older siblings at the school. In effect, out-of-catchment siblings have high priority for more than one school whereas non-sibling catchment children (and any subsequent children in the family) are disadvantaged for their own catchment school and have a low priority for any other school. In my opinion the 2014 arrangements are unfair because the disadvantage to catchment families applying for a place for their first child (and compounded for any subsequent children if the oldest child was displaced) outweighs the advantage to out-of-catchment families with a sibling already at the school who have chosen a school out of their catchment area. Therefore, before determination of the 2015 arrangements the council may wish to consider very carefully what the oversubscription criteria should be for that year.

Other matters

49. In reviewing the 2014 admission arrangements I noticed other matters which appeared not to comply with the requirements relating to admission arrangements, so I used my powers under s88I of the Act to review the arrangements as a whole for full compliance with the Code. During the meeting on 4 September 2013 and in an email afterwards I raised a number of matters which appeared to contravene the

Code, offered the council as the admission authority the opportunity to make the amendments immediately as a permitted variation under paragraph 3.6 of the Code, and agreed to note their progress in my determination. I raised the following points:

- To comply with the Code at paragraph 1.8, the admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated. The council has confirmed that random allocation will be used to determine which applicant will be allocated the final place. The council now has references to this tie-breaker in several sections but it does not appear consistently throughout the website;
- The council agreed that statistics showing the 2013 allocation of places by oversubscription criteria would be produced and posted on the website by week commencing 23 September 2013 and that these statistics would become an annual posting. However, at the time of this determination I have been unable to locate the 2013 information;
- The term “looked after” children on the council’s website needed to be updated to comply with paragraph 1.7 of the Code. I note that “Previously looked after children” has now been explained correctly in the section “General to all Stockport Schools” as *‘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’*. Yet in other areas of the website, at criterion A in the lists of oversubscription criteria, the term is given incorrectly as *‘Children in Public Care (looked after children) and previously looked after children who have been adopted immediately after being in public care’* ... As the term does not apply solely to children who had been adopted, it needs to be worded consistently throughout the website; and
- As the website has many sections relating to admission information, some of which has different wording and explanations as it may have been updated at different stages. I am of the view that the website needs to be reviewed and rationalised so that information is published clearly and consistently throughout the site.

Conclusion

50. It is clear that the council has made some considerable effort to comply with its duty to provide a school place for every child who requires one. However, as a result of the rise in birth rates, the increase of incoming families, and significant new housing development, it is likely that in 2014 the provision of reception places in the Heatons area generally, and at the school specifically, will come under increasing pressure and will therefore not be able to accommodate sufficient catchment area children. The lack of spare capacity in the Heatons area is likely to result in parents having a lack of realistic choice.

51. The objectors have provided evidence that the catchment area and PAN no longer serves sufficiently well the community local to the school and that there are not enough places available for catchment children. Furthermore, the council’s decision to retain the transitional arrangement for admissions in 2012 prioritising non-catchment siblings, even though the Code which came into law in February 2012 is not prescriptive about priority for siblings, has exacerbated the disadvantage to displaced non-sibling catchment children and to any younger siblings in future

years. I conclude, therefore, that the 2014 arrangements are unfair and contravene the Code at paragraphs 12, 14 and 1.8 because the disadvantage to catchment families applying for a place for their first child (and the disadvantage to any subsequent children) outweighs the advantage to out-of-catchment families with a sibling already at the school.

52. The council has offered to relocate, expand and rebuild the school and I conclude that with the support of the governing body and school community this would provide an effective solution to the lack of capacity in the school and in the Heatons area. However, as school building projects tend to have a long lead-in time, the council as admissions authority may wish to work closely with the school to develop a practical, temporary solution for the September 2014 reception intake, and also to consider how the displaced children from the 2013 cohort might be able to be relocated to the new school.

53. However, there is also the possibility that the school will not agree to expansion and relocation. If that is the case, the council will need to work with the school to ensure that a timely alternative solution is developed to reduce the disadvantage to catchment families applying for a place for their first child.

54. The council will need to consider carefully its arrangements for 2015 and consult as appropriate.

55. Accordingly, for the reasons explained in the paragraphs above, I uphold this objection to the 2014 admission arrangements.

Determination

56. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by Stockport Metropolitan Borough Council for admissions to Tithe Barn Primary School for admissions in September 2014.

57. I have also considered both the 2013 and 2014 arrangements in accordance with section 88I(5) of the Act and have found there are other aspects which do not conform with the requirements relating to admission arrangements in the ways set out in paragraph 49 of this adjudication.

58. 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: 22 November 2013

Signed:

Schools Adjudicator: Cecilia Galloway