

## **DETERMINATION**

**Case reference:** ADA2430

**Objector:** Northamptonshire County Council

**Admission Authority:** The Governing Body of St James Church of England Voluntary Aided Primary School, Northampton

**Date of decision:** 12 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 St James Church of England Voluntary Aided Primary School.**

**By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Adjudicator by the schools admissions manager on behalf of Northamptonshire County Council, the objector, about the admission arrangements (the arrangements) for St James Primary School (the school), a Church of England (CE), voluntary aided (VA) school for pupils of age range 3 -11 years for September 2014. The objection is to the inclusion of a criterion giving priority for a school place to children attending the school's nursery class within the school's over subscription criteria.

### **Jurisdiction**

2. These arrangements were determined within the timescale required 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 3 May 2013. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

### **Procedure**

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

4. The documents I have considered in reaching my decision include:
  - a. the objector's letter of objection dated 3 May 2013;
  - b. the school's response to the objection and supporting documents;
  - c. the faith body's, the Diocese of Peterborough (the diocese) response to the objection and supporting documents;
  - d. Northamptonshire County Council's, the local authority, (the LA) composite prospectus for parents seeking admission to schools in the area in September 2013;
  - e. confirmation of when consultation on the arrangements last took place;
  - f. copies of the minutes of the meeting of the governing body at which the arrangements were determined;
  - g. a copy of the determined arrangements; and
  - h. maps of the area.
5. I have also taken account of information received during a meeting I convened on 18 July 2013 at the school.

### **The Objection**

6. The objector argues that the inclusion of attendance at nursery classes in the oversubscription criteria for admission to the school is contrary to the Code in two aspects: firstly, that it is unfair, citing paragraph 1.8 of the Code: "Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation." and secondly, paragraph 1.9 e). that admission authorities, "**must** not give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation, including religious authority."

### **The Response**

7. The school's response to the objection is that the inclusion of attendance at the nursery within the oversubscription criteria was "considered a sensible deployment to encourage continuity for children and families and support the school in raising standards and thus the life chances of children who attend St James CE VA Primary School. In addition, early engagement with parents will further support children and families throughout their primary schooling."

8. The diocese responded in a similar vein, highlighting the building of the nursery unit with reference to "the imperative of providing continuity between the pre-school and Reception class experience." It argues as follows; "that Paragraph 2.67 of the 2009 Code allowed for the inclusion of a priority such as this, provided that other families were not

unfairly disadvantaged. There is nothing explicit about nursery priority in the new Code. It does not appear in the list of unacceptable criteria in para. 1.9” and that it “took the view that the criterion was correctly placed, after siblings of existing pupils and those who attend local churches.”

## **Background**

9. The school is a larger than average primary school in an ethnically diverse and socially disadvantaged area of Northampton. The most recent Ofsted inspection in June 2011 found the school to be ‘good’ having been placed in the category of ‘special measures’ following an Ofsted inspection in November 2006. The published admission number (PAN) for the school is 60. The school is oversubscribed with waiting lists for most year groups.

10. The June 2011 Ofsted report commented that “Pupils typically start school with skills, knowledge and understanding that are below the levels expected of children at this age ....Many children enter the reception classes with weak early language, literacy and numeracy skills.” The diocese reports that a key element of the head teacher’s and governors’ strategy to raise educational standards was the development of an on-site nursery provision. This was funded in the main by the diocese.

11. In April 2013 a purpose built nursery was opened on the school site and the age range changed, via a statutory proposal, to children aged 3-11 years. There are 30 full time equivalent places available as 60 part time places. The governing body has based the nursery admissions policy on the school’s existing policy.

12. All of the places are free entitlement places; the sessions are 9.00am - 12.00 noon and 12.30pm -3.30pm. No children are accepted over the lunch period and there are no arrangements for additional hours. No fees are charged. The information about the provision indicates that all day (but not lunchtime) may be possible only in very exceptional or emergency circumstances.

13. The school’s oversubscription criteria for 2013 were, in summary, as follows

1. Children in Public Care, that is children who are in the care of a local authority or provided with accommodation by a local authority, or a child who was previously looked after but immediately after being looked after became subject to an adoption, residence, or special guardianship order
2. Children on social or medical grounds where professionals have clearly identified that the school will best meet the needs of the child. These applications must be accompanied by documentary evidence from appropriate professionals within the Health or Social service
3. Children who have a sibling attending the school at the time of admission.

4. Children of worshipping members of any Church that is located in the ecclesiastical parishes of Northampton St James or St Mary's Dallington, and is a member of Churches Together in England. This includes the Church of England.
5. Children living with their parents/legal guardians whose home address is in the ecclesiastical parishes of Northampton St James or St Marys, Dallington.
6. Children of worshipping members of any Church that is a member of Churches Together in England. This includes the Church of England
7. Children of practising members of other faiths whose home address is in Northampton and who wish their child to be educated in a church school and Christian environment.
8. Children living with their parents/legal guardians and whose home address is in the borough of Northampton
9. Children of parents who wish their children to be educated in a church school and Christian environment.

14. The oversubscription criteria for the admission arrangements for September 2014 have included attendance at the nursery as criterion 5 above families who live in the ecclesiastical parishes, as shown below;

5. Children who attend the nursery at St James Church of England Voluntary Aided Primary School
6. Children living with their parents/legal guardians whose home address is in the ecclesiastical parishes of Northampton St James or St Mary's, Dallington.

### **Consideration of Factors**

15. I have considered the reasons given by the LA for the objection and the responses of the school and diocese. I accept that the Code is silent on the inclusion of nursery provision within oversubscription criteria so have sought to examine the factors relevant to the position of nursery classes as raised in the objection and against the overall general requirement for admission arrangements as set out in paragraph 14 of the Code that they **must** be clear fair and objective. The factors I have considered include the following:

#### Financial Support

16. The objector is of the view that the inclusion of the criterion relating to nursery attendance may be in breach of paragraph 1.9 e) of the Code; "they **must** not: ... give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation, including religious authority."

17. The nursery offers each pupil 15 hours a week of 'free entitlement.'

This is the free part time early education place, that all three and four year olds are entitled to for 570 hours a year, over a minimum of 38 weeks a year. The head teacher in her response to the objection states “We consider the nursery an educational provision to support the development of children and families rather than a nursery offering childcare.” At the meeting at the school it was confirmed that the provision was part time nursery educational places only with no opportunity for any “top up” of hours. There are no fees charged and no plans to charge.

18. I accept it may be argued that, by accepting a child into the nursery class, the school can claim the funding for this provision and there is therefore a financial link. I am not convinced that this is “financial support” that the Code is intended to prevent, particularly as there is no further opportunity or intention for parents to pay any fee for additional provision. Here, I view it as similar to the pupil led funding that the LA provides for school aged pupils and as such I am not persuaded that this element is in breach of paragraph 1.9 e) of the Code. However, my view about this paragraph is not the basis of my decision in this case.

19. In the following paragraphs I consider whether the school’s admission arrangements comply with the second reference to the Code from the objector of paragraph 1.8: “Oversubscription criteria must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.” I also consider whether the arrangements comply with paragraph 14 with respect to being “fair”.

### Consultation

20. As the arrangements for 2014 are different from those for 2013 the Code requires that changes in admission arrangements are subject to a process of consultation. The manner of consultation, timescale and consultees are defined in the Code in paragraphs 1.42-1.46. In particular, the Code requires;

“1.44 Admission authorities **must** consult with:

- a) parents of children between the ages of two and eighteen;
- b) other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admissions;
- c) all other admission authorities within the relevant area (except that primary schools need not consult secondary schools);
- d) whichever of the governing body and the local authority who are not the admission authority;
- e) any adjoining neighbouring local authorities where the admission authority is the local authority; and
- f) in the case of faith schools, the body or person representing the religion or religious denomination.

1.45 For the duration of the consultation period, the admission authority **must** publish a copy of their full proposed admission arrangements (including the proposed PAN) on their website together with details of the person within

the admission authority to whom comments may be sent and the areas on which comments are not sought. Admission authorities **must** also send upon request a copy of the proposed admission arrangements to any of the persons or bodies listed above inviting comment. Failure to consult effectively may be grounds for subsequent complaints and appeals.”

21. In Northamptonshire, the LA undertook consultation on behalf of all its schools. The LA publicised changes on its website and advertised in local newspapers advising that the following items were available on its website;

- “•Admissions arrangements for the co-ordination process facilitated by the County Council;

- Proposed changes for schools’ Published Admission Numbers (PANs);

- Proposed changes to schools’ oversubscription criteria”

There was a telephone number to call if the reader did not have access to the internet.

22. At the time of the consultation by the LA, the school did not have a website and therefore did not publish its proposed arrangements. The school has not shown any evidence that it drew the proposal to change its arrangements to the attention of parents of pupils in the school or families of prospective pupils. The head teacher wrote in a newsletter to parents on 7 May 2013 that a copy of the arrangements (by now determined) could be obtained from the school office. Parents receiving this letter with a child due for admission in September 2014 would in all likelihood qualify for a place under the sibling rule as they had a child already in school. However, parents who would be seeking a place in 2014 for a first born child would be unlikely to know of the change.

23. I accept that the LA consulted on behalf of its schools, but I do not accept that the consultation in this form, advertisements in local newspapers and a message on the LA’s website that did not name the school, was sufficient to draw the proposed changed arrangements to the attention of those people who might be affected by them, for example, the residents of the ecclesiastical parishes to whom 32 places were given in 2013 and 33 places in 2012, as can be seen in the tables below. It remains the responsibility of the admission authority, in this case the governing body, to ensure that the consultation is undertaken in a manner that is appropriate, even if undertaken in part, as in this case, by a third party.

24. While failure to consult appropriately does not necessarily make arrangements not compliant with the Code, consultation is a test of the fairness of the proposals, allowing families to register objections or support for intended arrangements which should be considered by the decision makers. I consider this failure to do so unfair and lacking transparency and openness as required by the Code.

### Pattern of admissions in recent past

25. I have also considered the pattern of admissions in previous years. The oversubscription criteria gave as priority 5, “Children living with their parents/legal guardians whose home address is in the ecclesiastical parishes of Northampton St James or St Mary’s, Dallington. “

26. Children were admitted as follows in 2012 and 2013 against the first five criteria;

	<b>2012</b>	<b>2013</b>
Children with special educational needs	<b>0</b>	<b>0</b>
1. Children in public care	<b>0</b>	<b>0</b>
2. Children with specific medical / social needs, supported by written evidence from an appropriate professional	<b>0</b>	<b>0</b>
3. Children who have a sibling attending the school at the time of admission.	<b>27</b>	<b>28</b>
4. Children of worshipping members of any Church that is located in the ecclesiastical parishes of Northampton St James or St Mary’s Dallington, and is a member of Churches Together in England. This includes the Church of England.	<b>0</b>	<b>0</b>
5. Children living with their parents/legal guardians whose home address is in the ecclesiastical parishes of Northampton St James or St Mary’s, Dallington.	<b>33</b>	<b>32*</b>
<b>TOTAL</b>	<b>60</b>	<b>60</b>

- In 2013 not all children in category 5 were offered a place; the furthest distance for a child with no sibling in school was 0.38 miles.

27. The admission arrangements for 2014 give priority for 60 nursery children over the residents of the ecclesiastical parishes to whom 32 places were given in 2013 and 33 places in 2012.

28. I accept that it is difficult to be specific about the implications for future applicants for reception places but the school PAN is 60, in the past two years nearly half the places (27 in 2012 and 28 in 2013) have been taken by siblings, which leaves some 30 places for possibly 60 nursery place children. A parent living in the ecclesiastical parishes of Northampton St James or St

Mary's, Dallington, who therefore now have a lower priority than before, will surely think they have little possibility of gaining a reception place and certainly less chance than they had previously.

### Parental Perception

29. Parents who do not already have a child in the school and are not attenders at the named churches may well consider they have little or no chance of gaining a reception place unless their child attends the nursery. The nursery has part time places in term time. The provision offered by the school is a daily 3-hour session (morning or afternoon). Part-time provision may be too difficult to organise for some parents who seek more than the 15 hours per week available during school terms. Other parents may have their child established at another provision and not wish to move the child. Some parents may prefer to keep their child at home or with a family member.

30. The school argues that children in the nursery, which is not yet full, may well gain a reception place by virtue of sibling priority, thus reducing the number of places taken by nursery pupils. It asserts that of the 21 pupils leaving nursery to enter Reception for September 2013, 20 would be eligible for places by either sibling or local area criterion if the 2014 admission arrangements applied.

31. I accept that there will be some degree of "overlap"; a child might meet several of the criteria, for example, be a sibling and attend the nursery and live in one of the named parishes. The nursery class is not yet full; the head teacher estimated that possibly 40 pupils of 60 would be of the age to transfer to Reception once all 60 nursery places were taken. I consider the potential risk to be high of the school filling its reception places from siblings (in previous years nearly half of the 60 school places) and from nursery children (even if only half of the 60 nursery children transfer).

32. I consider the reduction in opportunity for residents of the parishes above to gain admission to the school to be unfair. This unfairness is compounded by the fact that I consider the consultation to be less than adequate so there may be parents for whom the loss of priority will not have been anticipated.

33. I consider that the inclusion of the nursery criterion is unfair in that it may make parents think they should seek this nursery provision rather than any other, and other parents may decide that the part time nature of the provision means they cannot choose it because of their particular circumstances..

34. In addition, attending nursery is not obligatory and parents may make choices about attendance, some parents may prefer not to send their child to any form of pre-school. The Code says at paragraph 2.16

**"Admission of children below compulsory school age and deferred entry to school - Admission authorities **must** provide for the admission of all children in the September following their fourth birthday. The authority **must** make it clear in their arrangements that:**



a) parents can request that the date their child is admitted to school is deferred until later in the academic year or until the term in which the child reaches compulsory school age, and

b) parents can request that their child takes up the place part-time until the child reaches compulsory school age.”

35. I take this to mean that parents do not have to send their child to school, whether full or part time, until they reach compulsory school age. It is reasonable to infer then they should not have to attend this nursery class, when three or four years old, to have any realistic chance of gaining a place at the school when the child reaches compulsory school age. Parents have an absolute right to wait until their child is of statutory school age before school admission. Therefore, I think if there is any part of the school's admission arrangements which results in a parent feeling under pressure to send their child to school, albeit to the nursery class, earlier than they wish and before they are legally obliged to do, then this seems to me to go against the assumption behind this paragraph of the Code, and I consider it to be unfair.

## **Conclusion**

36. I accept the educational value of nursery provision and that the intentions for the inclusion of the provision in the oversubscription criteria are as explained by the school and the diocese.

37. I accept that the intention of the school is to offer educational provision, not child care, and that although it receives funding via the “free entitlement” it is arguable that it has not included the nursery class in the oversubscription criteria “on the basis of any financial support”.

38. Having decided to consult on the proposed admission criteria via the LA, the school did not actively seek the views of parents or prospective parents and particularly did not draw the matter to the attention of residents of the parishes of Northampton St James or St Mary's, Dallington. I consider this fails a test of openness and transparency required by the Code and is unfair.

39. The school argues that it is likely that pupils gaining admission via the nursery criterion would have anyway gained entry by virtue of sibling or locality. I think this year's model, when the nursery class has only just opened and is not full, cannot be relied on as the model for future admissions. The school is oversubscribed, the PAN is 60; I cannot assume there will be places for the residents of the parishes after the admission of siblings (in previous years nearly half the places) and the admission of eligible nursery pupils. A parent, particularly of a first born child, may well wish to take up a reception place at the school, but might not be able to take up the part time, term time, place in the nursery class because it would not meet their child care needs, or they may be unsuccessful in gaining a place. I consider it to be unfair that attending the nursery gives priority for admission to the school.

40. I also consider it unfair that parents may feel pressurised into taking up a nursery place to increase the likelihood, or even to have any realistic chance,

of obtaining a reception place when they would otherwise wish to delay entry to school until their child was of statutory school age. The Code expressly forbids requiring parents to take up their school place until the term in which the child reaches compulsory school age; this contributes to my finding of unfairness.

41. As the Code is silent on the matter of nursery provision, I have considered a range of matters to come to a conclusion. I accept that the school wants its pupils to have the benefit of good quality pre-school provision; that it does not charge fees directly to a parent and that it has adopted admission arrangements for the nursery that largely mirror those for the school. On the other hand it has introduced a criterion, without appropriate consultation, that will make admission more difficult for parents in an area which has always had a priority for admission to the school. The new priority for attending the nursery class, however laudable the provision, may have the effect of making parents seek a nursery place which does not meet their needs or leaving them without a reception place because they need more child care than is offered. On balance then, I do not consider that the benefits to children both in educational and school access terms who have a nursery place outweigh the potentially disadvantageous implications of the arrangements for others. In my judgement the arrangements are unfair.

### **Determination**

42. 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 St James Church of England Voluntary Aided Primary School.

43. 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: 12 August 2013

Signed:

Schools Adjudicator: Miss Jill Pullen