

## DETERMINATION

**Case reference:** ADA2540

**Objector:** A member of the public

**Admission Authority:** The governing body of Kentish Town Church of England Primary School

**Date of decision:** 21 August 2013

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the governing body of Kentish Town Church of England Primary School.**

### **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 member of the public, about the admission arrangements (the arrangements) for Kentish Town Church of England Primary School (the school), a voluntary aided primary school for pupils aged 3 to 11 years, for September 2014. The objection is to the faith element of the oversubscription criteria and procedures. The objector states that these are not reasonable, clear, objective and procedurally fair as required by paragraph 1.8 of the School Admissions Code (the Code). She states that paragraph 1.36 of the Code allows faith schools “to discriminate against the rest of the community by using faith-based criteria” but that this section does not remove the need to have reasonable criteria and apply fair procedures as specified in paragraph 1.8 of the Code.

### **Jurisdiction**

2. These arrangements were determined under section 88C of the Act by the school’s governing body, which is the admission authority for the school. The objector submitted her objection to these determined arrangements on 9 July 2013. As outlined below the school did not determine their admission arrangements for 2014 until 3 July 2013. Under the circumstances, I accepted this case as a late objection as an objection could not have been considered until the arrangements had been determined. 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 Code.
4. The documents I have considered in reaching my decision include:
  - a. the objector's letter of objection dated 9 July 2013 and supporting documents;
  - b. the school's response to the objection and supporting documents;
  - c. the London Borough of Camden's, the local authority (the LA) response to the objection and supporting documents;
  - d. the LA's 2012 report on school admissions and its 2013 report on the impact of religious preference in primary school oversubscription criteria;
  - c. the response of the Diocese of London (the diocese) to the objection and supporting documents;
  - c. the LA's composite prospectus for parents seeking admission to schools in the area in September 2013;
  - d. the most recent Ofsted inspection report for the school;
  - 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; and
  - g. a copy of the determined arrangements.
5. I have also taken account of information received during a meeting I convened on 18 July 2013 at the school. The meeting was attended by two representatives of the LA, the representative of the diocese, the head of school, the executive head teacher, the governor for admissions, the school's senior administrative officer and a representative of the objector who was present in lieu of the objector because she was unable to attend. Another objection (ADA2436) had been made to the school's admission arrangements and that objector was also present.

## The Objection

6. The objector cites paragraph 1.8 of the Code which says that oversubscription criteria "**must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation." She goes on to refer to paragraph 1.36 which says that faith schools....."may use faith-based oversubscription criteria and

allocate places by reference to faith where the school is oversubscribed". It is her view that whilst paragraph 1.8 is a requirement to ensure that over subscription criteria and procedures are fair, section 1.36 "allows faith schools to discriminate against the rest of the community by using faith-based criteria."

7. She goes on to quote 2011 census data for Camden, the LA area in which the school is situated, indicating that 34 per cent of the population self-identified as Christian. The Church of England, (CofE) she says, estimates that fewer than 2 per cent of the UK population attend church regularly. In Camden, 40 per cent of reception school places are provided by Christian faith schools with faith oversubscription criteria stipulating church attendance. She contends that the number of places in the school allocated on the basis of faith does not reflect the community it serves or "normal" patterns of church attendance. She doubts the soundness of the school's faith criteria and questions the authenticity of many faith-based applications to the school. In the light of this, she contends that the oversubscription criteria are both unfair and unreasonable.

8. In addition, the objector raises a number of matters relating to the Code itself. She states that neither local authorities nor any other government agency has responsibility to monitor or regulate the overall allocation of reception school places by faith schools. No one, she says, is monitoring the fairness of the section 1.36 exception to the equalities legislation. Although I have recorded the views of the objector, I make no comment on these matters as they are not within my jurisdiction.

## **Background**

9. On 15 May 2013, an objection was made to the school's consultation on its arrangements for 2014. When dealing with that case, I also considered whether the school's arrangements overall were compliant with the Code. The linked determination for ADA 2436 deals with a number of other matters relating to the school's arrangements. I am not repeating those matters in this determination.

10. The school's stated purpose is to serve the local community. It opened an autism resource base in October 2011. Every classroom and shared space in the school was redesigned to ensure children with autism could be fully included in all aspects of school life. Within each mainstream class, from reception to year 6, two places are allocated for children in the autism resource base (ARB). Currently, there are seven children within the ARB. As a result of opening the ARB it was necessary to reduce the school's planned admission number from 38 to 30.

11. In 2010, Ofsted inspected the school and judged it to be outstanding. It is regularly oversubscribed. Previous oversubscription criteria 2 and 3, after looked after children were as follows;

2. Children whose parents worship at St Benet's Church, having attended at least once a month for a minimum of one year prior to application.\*

3. Children whose parents live within a quarter of a mile of the main gate of our school (measured in a straight line – “as the crow flies”) and who worship at a Christian church that subscribes to the Nicene Creed, having attended at least once a month for a minimum of one year prior to application.\*

12. In recent years, there has been an increase in applications under these two criteria. For 2013 the school received an unprecedented number of applications under criteria 2 and 3 along with a larger number of applications from siblings. (criterion 4). In effect, under the 2013 arrangements, children living a considerable distance from the school whose parents worshipped at St Benet’s could secure places that were then not accessible to local children. The result was that nine children with siblings in the school (now reduced to six) did not gain places and the governors found this unacceptable. They wanted to avoid a repetition of this and to secure places for children from the immediate community. In addition, they felt that the interests of the non-Christian population within the immediate community (for whom attendance at a Christian church is not an option) should be considered.

13. The governors discussed these difficulties and proposed some changes for admissions in 2014 that they hoped would prevent a repetition of the problems. They formulated the following revised criteria;

1. Looked after child or a child who was previously looked after but immediately after being looked after became the subject of an adoption, residence, or a special guardianship order.
2. Children who have a sibling in the school at the time of entry, whose parents live within half a mile of the main gate of our school (measured using the Camden Council website) and who worship at St Benet’s Church, having attended at least twice a month for a minimum of two years prior to application.\*
3. Children who have a sibling in the school who have a statement of Special Educational Needs.
4. Children who have a sibling in the school at the time of entry and who live within half a mile of the main gate of our school (measured using the Camden Council website).
5. Children whose parents live within half a mile of the main gate of our school (measured using the Camden Council website) and who worship at St Benet’s Church, having attended at least twice a month for a minimum of two years prior to application.\*
6. Children whose parents live within a quarter of a mile of the main gate of our school (measured using the Camden Council website) and who worship at a Christian church that subscribes to the Nicene Creed, having attended at least twice a month for a minimum of two years prior to application.\*
7. All other children (5 Places).

Children with a statement of Special Educational Needs (SEN) naming our school have automatic entry.

14. They then delegated the consultation process to the LA. The LA reports that the school's admission policy for 2014 was circulated along with Camden's own arrangements for 8 weeks from the beginning of January until the end of February 2013. The LA was aware of the difficulties arising from the 2013 admissions round and was supportive of the intention behind the changes.

15. The diocese viewed and commented on the proposed admissions criteria as did the LA. There were no other responses to the consultation.

16. The school failed to publish a copy of the full proposed admission arrangements on its website as it is required to do under paragraph 1.45 of the Code. The school did not do this, having assumed in good faith that in delegating the consultation to the LA they had done what was necessary. Furthermore, following the consultation the school did not proceed to determine its arrangements. Prompted by the OSA following an objection it finally proceeded to determine on 3 July 2013.

17. The LA recognises that the arrangements that were finally determined on 3 July are not fully Code compliant and was party to the agreements at the meeting on 18 July as to changes that would need to be made to the 2014 arrangements as quickly as possible following my determination.

## **Consideration of Factors**

18. The school is designated as a school with a religious character. Under paragraph 1.36 of the Code it is therefore permitted to give priority for admission using faith-based oversubscription criteria. The objector has questioned the number of faith-based school places in Camden and provided a lot of additional related material. This matter has also been considered by the LA in its report to Scrutiny Committee of 26 March 2013, which reached no firm conclusions. These aspects are not within my jurisdiction. My task is to determine whether the school's faith-based oversubscription criteria are inherently fair and clear as all oversubscription criteria are required to be according to paragraph 1.8 of the Code.

19. The school's previous faith-based oversubscription criterion stipulated attendance at St Benet's church (or elsewhere as specified) at least once a month for a minimum of one year prior to application. This criterion was revised for 2014 and now requires a higher level of attending church as it specifies a minimum of attendance of twice a month for at least two years. The new criterion is more demanding than the criteria used by many other faith schools. The objector says that this is a minimal demand and that many parents will fulfil it in order to obtain school places. The objector is entitled to her view, but I must consider the criterion against the Code. I am satisfied that it is reasonable in setting a higher level of attendance than in previous years, it is clear about what is required, and it is objective as attendance happens or it

does not. The school is permitted to use faith-based criteria so it is procedurally fair and I am satisfied it meets the requirements of the Code.

20. The objector also says that, “there is no mechanism by which the admissions authority can authenticate faith-based applications of which there are a disproportionate number.” In fact the arrangements state clearly that applicants under the faith criteria must complete a school information form (SIF) and that the relevant priest must sign certifying church attendance. This is the mechanism by which the admissions authority can authenticate faith-based applications and it is in line with the requirements of the Code as set out in 1.36. It is the responsibility of the Church of England in the person of the priest to ensure that church attendance is genuine. The Code does not demand authentication of what is in people’s hearts.

### **Conclusion**

21. The objector is right in saying that section 1.36 of the Code does not remove the need to have reasonable criteria and apply fair procedures as specified in paragraph 1.8 of the Code. In this case, the admission authority itself recognised the possible unfairness of aspects of its admission arrangements and moved to try and improve matters in formulating the revised 2014 arrangements. The Code specifically permits the use of faith-based oversubscription criteria and the evidence shows that the school has considered issues of fairness alongside the use of these permissible criteria. The faith-based oversubscription criteria are reasonable and procedurally fair. They are clear and objective. They meet the requirements of the Code. I do not therefore uphold the objection.

### **Determination**

22. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the governing body of Kentish Town Church of England Primary School.

Dated: 21 August 2013

Signed:

Schools Adjudicator: Mrs Janet Mokades