

## DETERMINATION

**Case reference:** ADA/2556

**Referrer:** A group of parents

**Admission Authority:** The governing body of Christ Church New Malden Church of England Primary School, Kingston upon Thames

**Date of decision:** 25 October 2013

### **Determination**

**In accordance with section 88I(5) of the School Standards and Framework Act 1998 I have considered the admission arrangements of Christ Church New Malden Church of England Primary School. I determine that the arrangements do not conform with the requirements relating to admission.**

**By virtue of section 88K(2) of the Act 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 a group of parents about the admission arrangements (the arrangements) for Christ Church New Malden Church of England (CE) Primary School (the school), a voluntary aided school for 3 to 11 year olds, for September 2014. The objection is to the way in which the admission authority measures the distance from home to school in the school's oversubscription criteria for the reception year group.

### **Jurisdiction**

2. The admission arrangements were determined under section 88C of the Act by the school's governing body which is the admission authority for the school. The parents submitted their objection to these determined arrangements on 21 August 2013. The School Admissions Code 2012 (the Code) indicates a deadline of 30 June for the submission of objections. Regulation 23 of the School Admissions (Admission Arrangements and Co-ordinations of Admissions Arrangements) (England) Regulations 2012 requires the adjudicator to consider objections made on or before 30 June. The objectors state that they were unaware of the determined arrangements until they were published on the school's website on 17 June 2013 which did

not provide them with sufficient time to object before the deadline. As the deadline for objections had passed I have used my power to consider the matter raised under section 88I(5) of the Act and I am satisfied that 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 objectors' email of objection dated 21 August 2013, further detail of the objection dated 17 September and a number of further submissions between 24 September and 2 October 2013;
  - b) the school's response to the objection and supporting documents dated 18 September 2013 and further communications;
  - c) the Southwark Diocesan Board of Education's (the diocese) response to the objection dated 16 September 2013;
  - d) the Kingston upon Thames, the local authority's (the LA) composite prospectus for parents seeking admission to schools in the area in September 2014;
  - e) the LA's response to the objection dated 19 September 2013 including a map and information about the number of children admitted in the previous school year and further correspondence;
  - f) copies of the minutes of governing body meetings from September 2012 to January 2013 which contain reference to discussions on admission arrangement; and
  - g) a copy of the school's arrangements published on the school's website and on the LA's website.

## **The Objection**

5. The objection from a group of parents contends that the arrangements do not conform to paragraph 1.8 of the Code which states that "Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation." The objection is in three parts. The objectors consider that the school's admission arrangements for allocating open places are not reasonable or procedurally fair; that the arrangements are not clear, objective and transparent and that the admission policy was published late.

6. Key to the objection is the fact that the school has a split site with infant and nursery provision in one location and junior provision in another; the oversubscription criteria include measuring distance from home to school from

the infant site only and the objectors consider this to be unfair.

## **Background**

7. The school is a voluntary aided school catering for 3 to 11 year olds. The governing body is the admission authority for the school. The published admission number (PAN) for reception is 60. The school is designated as a school with a religious character and the Christian ethos is reflected in the school's published information and on its website.

8. The school is popular and was over-subscribed for admission to reception in 2013. The school's capacity is recorded as 460 and currently there are 484 children on roll. The most recent Ofsted inspection in 2013 judged the school to be good overall.

9. Separate infant and junior schools were amalgamated in 2006 forming the current primary school. Admission arrangements from the infant school were adopted at that time for admission into reception and have remained in place for the last eight years.

10. The first oversubscription criterion is looked after and previously looked after children. Children with known social or medical needs and siblings are criteria two and three and these are followed by two faith based criteria relating to attendance at the local churches or attendance at one of five other places of worship in the area. Criterion six states "Children who live nearest to the school, as measured in a straight line to the main entrance of the Lime Grove site. All distances will be measured using the School Admissions computerised Geographical Information System". The Lime Grove site is the location of the nursery and infant provision.

## **Consideration of Factors**

11. In trying to establish exactly when the arrangements were published, I first tried to confirm that as the arrangements for 2014 are different from those of 2013 the arrangements have been properly consulted on and determined. At paragraph 15b of the Code it states that "Admission authorities **must** set (determine) admission arrangements annually. Where changes are proposed to admission arrangements, the admission authority **must** first publicly consult on those arrangements. If no changes are made to admission arrangements, they **must** be consulted on at least every 7 years." The procedures required for consultation are set out in paragraphs 1.42 to 1.45 of the Code. Paragraph 1.44 lists the groups of people who must be consulted and includes at 1.44a "parents of children between the ages of two and eighteen" and at 1.44b "other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admissions".

12. The minutes of a full governing body meeting on 19 September 2012 record that the admissions committee needed to meet to discuss the admission arrangements in order to allow time for consultation. At the full governors meeting on 4 December 2012 the admissions committee reported that it proposed to change the arrangements for measuring distance to a

straight line or 'as the crow flies' measurement in line with changes made by the LA to the arrangements for community schools. No other changes were agreed.

13. The proposed changes were distributed to schools and neighbouring authorities by the school as part of the consultation on arrangements in January 2013. The minutes of the governors meeting from 31 January 2013 report that the admission policies were 'out for consultation'.

14. Further correspondence with the school indicates that the school determined the arrangements on 4 December 2012 prior to the period of consultation. The minutes record that "Admissions 2014 – Governors decided to accept RBK's (LA) proposal to make distance from school a straight line or 'as the crow flies' measurement."

15. The objectors fall into both categories 1.44a and 1.44b, but I have not been provided with any evidence that they were consulted. The school reports that no responses were received from the schools or neighbouring authorities. It appears therefore that the consultation arrangements did not fully comply with the requirements of the Code as parents and other persons in the relevant area were not included in the consultation process. Furthermore, the governors appear to have determined their arrangements prior to consultation, contrary to the Code.

16. Part of the objection refers to the late publication of the admission arrangements suggesting that the parents were only made aware of the arrangements when they were published on the school's website on 17 June 2013. Paragraph 1.47 of the Code states that "Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on their website displaying them for the whole offer year." A letter from the chair of governors to the objectors dated 11 September 2013 states that the arrangements were agreed in the autumn term 2012 and says "I do not know when this went live on our website; it appears that there may have been a delay for which I can only apologise."

17. In the response from the school the headteacher states that "unfortunately we are unable to confirm the exact date that the 2014/15 admissions arrangements were displayed on the website and we apologise for this".

18. The arrangements were not published as required by 1 May 2013, they were not published until sometime in June 2013 which reduced the time available for parents to object, that is by 30 June 2013. Particularly relevant to this is the fact that the arrangements changed the methodology of measurement, but not the place from which measurements were made and the parents were unaware of this.

19. I conclude therefore that as first the consultation arrangements did not involve the parents and others in the relevant local area and secondly the arrangements were not published on time this disadvantaged local parents and failed to comply with the Code.

20. The other two parts of the objection refer to paragraph 1.8 of the Code and I will deal with these together. The objectors say that the arrangements are unfair to families who live near to the junior site as the distance is measured from the infant site entrance only. They suggest that as children spend four years of primary education at the junior site and only three years at the infant site that this supports their objection. As a Church of England school the over subscription criteria provide priority for children who attend places of worship and therefore the number of non-faith places is limited. As the numbers of children in the area increase the parents believe that there is a risk that families living near to the junior site will be disadvantaged and therefore the arrangements are not reasonable or fair.

21. The school's response states that the arrangements have remained the same since reorganisation in 2006. Prior to amalgamation the junior school admission criteria included priority for children attending the infant school and therefore the current arrangements reflect this.

22. The response also provides details of proposals to the governors from a member of the governing body in September 2012 that the point from which the home to school distance is measured is changed to a half-way point between the two sites.

23. Governors have discussed the issue many times and are keen that the arrangements best meet the needs of the local community. They have discussed the specific issue of the point from which measurements are made, but are aware that any changes will benefit some but may have a negative impact on others. The school suggests that the governors will collect 'data for successful applicants and those who have not been admitted for a couple of years and to model the impact of the different proposals.' The school says that this course of action is "particularly wise in light of the LA's decision to change its method of distance measurement, and the school's decision to comply with this." It goes on to say that it would like to analyse the implications of the change in how the distance is measured before it decides on any further changes concerning the point at which measurements are taken.

24. The school also reports that it had not previously received any comments relating to the point of measurement. It does not believe that the current arrangements are unfair, but the governors would be discussing the issue again at a meeting on 24 September 2013.

25. The response from the diocese notes that the governors had considered changing the point from which measurements are taken but had decided not to change the policy but keep it under review. They suggest that it is logical to measure from the infant site as this is where the children start their education. They believe that the decision not to change the point at which distance is measured was a reasonable one particularly in light of the fact that they had changed the methodology. The diocese considers the arrangements to be clear, objective and procedurally fair.

26. The LA provided a helpful map and details of the admissions for the last two years. For entry to reception in 2012 there were 210 applications for

admission with 58 of these being first preference. For 2013 there were 217 applications with 78 being first preference. There are 60 places available. Although these statistics only cover two years it would appear that there is a recent increase in first preference applications.

27. The home to school distance of the last child offered a place under criterion six was 0.649km in 2012 and 0.685km in 2013. The distance from the infant site to the junior site is 0.634km.

28. The LA suggests that “the use of one entrance at school to measure home to school distance is standard practice, as is the practice of measuring distances to the infant site for the reception intake”. In a subsequent communication the LA suggests that “there may be instances where a school has two or three or more school gates, but the school designates one or two gates to which home to school distances are measured.”

29. The LA’s oversubscription criteria for community schools state that distance is measured to the ‘nearest school gate’ which suggests that more than one location can be used. There is therefore no precedent from the LA that only one location should be used for measuring distance.

30. The LA is aware that the governors have the arrangements under review and has discussed the issue with them particularly “in the context of the recent growth and changes in population distribution and migration which have resulted in unprecedented demand for primary school places across London and nationally”.

31. In 2012, 22 children were admitted to the school under criterion six (distance from school). In 2013 this number was nine. The LA’s statement that there is an “unprecedented demand” for primary school places suggests that the number may reduce further in the future. If overall applications increase and this includes faith based applications then the number of applicants who will be successful under criterion six will reduce further. In addition, if the numbers of applications increase further, the school may become oversubscribed before reaching criterion six. If this were the case the distance tie breaker would be implemented for prioritising applicants the meet a higher priority criterion.

32. Although no previous objections have been made on this issue to the school or the LA I do not consider this justification for retaining the arrangements. The pressure on school places is an issue in the LA and therefore it is likely that pressure on non-faith places at the school will also increase.

33. The school is proposing to gather data for “a couple of years” before making a decision on this issue. I acknowledge that the measurement methodology has been changed for 2014 from walking distance to crow flies distance, but I do not consider this to be sufficient reason for delaying the consideration again of the point of measurement. A comparison of the distance between walking routes and ‘crow flies’ measurements does not indicate that there would be major change in the addresses for which families are successful in their application. The school has data from the previous

eight years of entry from 2006 to 2013 which would provide information on patterns of application and the success of these applications.

34. In their submission the parents provide photographic evidence that their properties are adjacent to the junior school. They also report possible admission to other local schools and I have studied the locations and the admission arrangements for these schools. Infant and junior schools in the LA which share a site have an oversubscription criterion in the junior school's arrangements that gives priority to children attending the 'paired' community infant school.

35. I have considered the availability of places at other schools using the 2012 statistics. There are four other school sites within a two kilometre distance from the school. The nearest of these is Corpus Christi Catholic Primary school. In the past two years 59 of the 60 admissions to reception have been allocated to children who qualify for admission under the faith criterion. In 2012 one child had a statement which named the school and in 2013 one child was looked after. There appears therefore to be little if any opportunity for children who do not qualify under the faith criterion to be offered a place at Corpus Christi.

36. Coombe Hill Infant and Junior Schools share one site and are 1.6 kilometres from the infant site and 1.7 kilometres from the junior site. These are oversubscribed schools with children being admitted to the infant school with a maximum distance from home of 1.43km in 2012 and in 2013 of 2.1km. Children living near to both sites of Christ Church would have been admitted in 2013.

37. Burlington Infant and Junior Schools are also separate schools sharing one site and are 1.6 km from the infant site and 1.9km from the junior site. Families living near to the either of the Christ Church sites would not have been admitted under the distance criterion in 2012 but would have gained places in 2013.

38. The fourth local school is Kings Oak Primary school which is 1.5 km from the infant site and 1.0 km from the junior. This school is not oversubscribed and would therefore have been able to offer places to families living near to either Christ Church site in 2012 and 2013.

39. I have concluded from this information that the availability of alternative provision for families who are unsuccessful in their application to the school are very similar for those living near to either the infant or the junior sites.

40. The LA's view is that "the governors of the school are aware of the issues and it supports them in their efforts to make their admission arrangements as fair and equitable as possible to the local community." The school's response states the "the governors have continued to discuss whether the policy does best meet the needs of the local community" and "...we are most concerned to ensure that policy is fair and our intake reflects the immediate community." Neither the LA nor the school describes what they mean by local or immediate community.

41. It is my view that the local community of a school is made up of the families who live near to it. This school has two sites and it is clear that the parents living near to one of the sites are disadvantaged by the over subscription criteria for measuring distance from home to school from one site only. I therefore conclude that the admission arrangements are unreasonable and unfair in this respect.

### **Conclusion**

42. The governors of the school as the admission authority did not fully comply with paragraphs 1.44 and 1.47 of the Code in terms of consultation and publication of the admission arrangements for admission to the reception year in 2014. Local parents were unaware of the changes being proposed to the arrangements and to parts of the arrangements which were to stay the same. The late publication of the arrangements on the school's website further disadvantaged the parents and contravened the Code.

43. The school states that it is keen to comply with the Code and to best meet the needs of the local community. Families living adjacent to the junior site are disadvantaged in the admission arrangements. For this reason I consider this to be unfair and contrary to paragraph 1.8 of the Code.

### **Determination**

44. In accordance with section 88I(5) of the School Standards and Framework Act 1998 I have considered the admission arrangements of Christ Church New Malden Church of England Primary School. I determine that the arrangements do not conform with the requirements relating to admission arrangements.

45. By virtue of section 88K(2) of the Act 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: 25 October 2013

Signed:

Schools Adjudicator: Mrs Ann Talboys