

## DETERMINATION

**Case reference:** VAR/000549

**Admission Authority:** The Governing Body of All Saints Benhilton Church of England Primary School in the London Borough of Sutton

**Date of decision:** 4 January 2012

### **Determination**

In accordance with section 88E of the School Standards and Framework Act 1998, I approve two of the three requested variations to the admission arrangements of All Saints Benhilton Church of England Primary School in the London Borough of Sutton. I determine that for admissions in September 2012 the published admission number for the school shall be 60. I also approve the variation to increase the number of foundation places and open places to 42 and 18 respectively. I do not approve the introduction of a new oversubscription criterion giving priority to children who have attended the nursery located at the School.

### **The referral**

1. The London Borough of Sutton Council (the Council) referred, on 17 November 2011, requests to the Adjudicator for variations of the admission arrangements of four primary schools in the Borough. One request was on behalf of the governing body of All Saints Benhilton Church of England Primary School (the School), a voluntary aided school. The governing body had asked the Council to submit the request on its behalf. This request is a result of the need to expand provision within the area to meet an increasing demand for places in schools across the Borough. The requested variation is that the published admission number (PAN) for September 2012 be increased from 35 to 60, and that two further changes to the admission arrangements that will apply from that date also be made that:
  - (i) the number of foundation places and open places be increased from 28 and 7 to 42 and 18 respectively;
  - (ii) a third oversubscription criterion be introduced in respect of open places which gives priority to "those who are resident in the London Borough of Sutton and who have attended the nursery at the school for at least three terms immediately prior to admission.

### **Jurisdiction**

2. The referral was made to me in accordance with section 88E of the School Standards and Framework Act 1998 (the Act) which states that:

*"where an admission authority (a) have in accordance with section 88C*

*determined the admission arrangements which are to apply for a particular school year, but (b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined, the authority must [except in a case where the authority's proposed variations fall within any description of variations prescribed for the purposes of this section] (a) refer their proposed variations to the adjudicator, and (b) notify the appropriate bodies of the proposed variations".*

3. I am satisfied that the proposed variation is within my jurisdiction.

### **Procedure**

4. In considering this matter I have had regard to all relevant legislation, guidance and the School Admissions Code (the Code). The documents I have considered in reaching my decision include:

- the Council's letter of referral of 17 November 2011 on behalf of the School's governing body and supporting documents;
- the determined arrangements for 2012/2013 and the proposed variation to those arrangements;
- a copy of the Council's booklet for parents seeking admission to schools in the area in September 2012 ;
- a copy of the letter dated 27 October 2010 from the headteacher on behalf of the School's governing body informing the Council that the governing body agreed in principle to the proposed expansion;
- a copy of the letter dated 13 May 2011 from the headteacher of the School inviting parents, staff and the local community to a meeting to hear about and comment upon the proposed expansion;
- a copy of the minutes of the governing body of the school approving the request to vary the PAN;
- copies of the Council's committee papers discussing and approving statutory proposals for change;
- a copy of the public notice to enlarge the school;
- copies of the notes from consultation meetings; and
- maps showing the location of the school.

### **Other matters**

5. When considering the requested change to the admission number I looked at the current admission arrangements. I observed that the wording which describes the use of the distance tiebreaker within each of the oversubscription criteria could be clarified. I explained why I believed this to be the case in a letter to the governing body dated 2 December 2011. I hope that it will agree that it will take my comments into account when determining future admission arrangements.

### **Background**

6. In common with some other London Boroughs, the demand for school places in Sutton is increasing. Meeting the demand for new places can be achieved by opening new schools or expanding existing ones. In the autumn of 2010, the

Council consulted with schools where expansion was considered to be feasible. Following this preliminary consultation, it held further consultations about proposals to expand four of these schools, one of which was the School, and subsequently published formal statutory proposals in September 2011 to build new classrooms at each of the four schools. In the period between 22 September and 20 October 2011 no representations were received concerning the School and in consequence, on 21 October 2011 the Council conditionally approved the proposal for the School subject to the conditions that:

(i) planning permission for the building work was approved by 1 April 2012

(ii) the PAN for the School for September 2012 was increased through a variation which had the approval of the Schools Adjudicator by 1 April 2012.

7. As set out in the Code, the admission authority, in this case the School's governing body, can make changes to its determined admission arrangements, but only in certain prescribed situations. The governing body, as required, determined the arrangements for admissions in September 2012 by 15 April 2011. It is now seeking to make changes that require a variation to be approved by the Schools Adjudicator. The decision to expand the school and the consequential alterations to its premises was included in the Council's consultation and determination of the statutory proposal.
8. The Council has taken the decision to expand schools to meet growing demand. The need to expand the School within the year constitutes a "major change in circumstances" in the governing body's view and justifies the requested variation to increase the PAN to allow the School to admit pupils up to its new intended capacity.
9. The governing body and the Council notified the community associated with the School about the proposed increase in the PAN as part of the statutory consultation on the enlargements of the School.

### **Consideration of Factors**

10. The case for the expansion of the School's premises to facilitate an increase in the PAN, background information and comments received in the consultations were forwarded to me as part of my consideration of the requested variation. The proposal for expanding the School has been determined by the Council and I have no reason to review this decision. I do, however, have to decide whether the requested variations to the admission arrangements for the School should be approved. In doing this I have to be satisfied that the changes are necessary in the light of demand for school places and that the School will be in a position to accommodate the additional pupils.
11. I can see from the data provided that additional places are needed in the area. The minutes of the governors' meetings at the school report that for September 2011 there were 64 foundation and 97 open applications for the 35 places available at the School. There were 10 appeals heard in May and June 2011 and all were rejected. The data shows that the Council needs more places and I am satisfied I should approve the increase in the School's PAN to provide some of

the places that are required in the area.

12. The request to make further changes to the School's admission arrangements is a consequence of the increase in the number of places which will be available in September 2012. The second requested change seeks to redefine the number of foundation and open places in the light of the proposed new admission number. The balance has been changed slightly to give a greater proportion of open places than previously. This is likely to have the effect of enabling more local children to attend the school, thus "serving the local community as well as working closely with our church". This aspiration was set out in the minutes of a meeting of the governing body on 27 October 2010. I am of the view I should approve this part of the variation.
13. The third change which has been requested consequent upon the increase in PAN is the introduction of a new oversubscription criterion in relation to applications for "open" places that is based on attendance at the nursery attached to the School. The nursery has a capacity of 52 places and in July 2011 34 children left it to go to the School or other primary schools in the area. The headteacher reports that appeals for school places received by the School have largely been from parents whose children attended the nursery (6 out of 7 in May 2011, 4 out of 5 in 2010).
14. In order to examine the requested variation to the School's oversubscription criteria, I have considered how this would operate as part of the admission arrangements as a whole. The first 42 of the 60 available places in 2012 would be allocated to those children who fulfil the various foundation criteria, some of whom may also have attended the nursery. In the case of oversubscription for these places, children without places would then be considered alongside children whose application fell to be considered for one of the available "open" places. The remaining 18 places available are described as "open" places with the first priority given to Looked After Children and the second priority given to siblings. The governors have requested that a third group then be given priority - those who have attended the nursery. The Code is specific in its comments about admission to schools from nurseries and in paragraph 2.67 states that "Admission Authorities that propose to give priority to those who attend the nursery...should ensure that families that live nearer the school, those who choose to take up other nursery options or the free entitlement at an alternative local provider or those who have recently moved to the area are not unfairly disadvantaged compared to other families."
15. It seems to me that, by giving priority on the basis that the applicant has attended the nursery for three terms and is a London Borough of Sutton resident, those groups referred to in the Code quoted in the previous paragraph could be disadvantaged. Thirty four children left the nursery in 2011 and there were 64 applications for foundation places and 97 applications for other places at the school. Given that some children attending the nursery may not live locally, any child who lives near the school but who for whatever reason has not attended the nursery would then be displaced. Even with an increase of admission number to 60 it seems likely that the school will continue to be oversubscribed and so this situation is unlikely to change. The Code at paragraph 2.67 does not make the protection of children who have not attended the nursery a mandatory

requirement, however, the governors are required by the Code to have a good reason not to do so. None has been presented to me, and I am mindful that the governors have in the minutes of their meeting referred to above stated their desire to serve the local community.

16. The oversubscription criteria in place at present use distance from the school as the tie breaker for allocating places in the open category, this gives expression to the governing body's aspiration to serve the local community. I cannot see how adding attendance at the nursery is going to make this a better process. The Code states in paragraph 2.66 that "published admission arrangements **must** make clear that attendance at a nursery class does not guarantee a place at the school for primary education and that a separate application **must** be made for transfer from nursery to primary school." The governors follow the requirements of the Code in this respect. Nevertheless, I believe they have paid insufficient attention to what paragraph 2.67 has to say, for the reasons stated above. I have concluded that I should reject the request to vary the admission arrangements to include the proposed new third oversubscription criterion.
17. I note that the decision to expand the school was made conditional on both my decision to alter the admission number and planning permission being secured. The imposition of the planning condition does raise a potential problem. If planning permission is not granted but I have agreed the variation requested for September 2012 there is a risk that the admission number will have been changed and the necessary building work has not be carried out with the outcome that there would be insufficient accommodation available for the pupils. The Council has reassured me on this point and states that it has every confidence that as a result of careful discussion and consultation with the planning department through the design process they feel that potential issues have been addressed and they are optimistic about the outcome of the planning process. As part of the risk management process the Council has also made contingency plans for the possibility that planning permission is not granted in the necessary time frame so that the School would still be in the position to take the increased numbers of pupils in 2012 and subsequent years. As a result it does not seem necessary to postpone making a determination until the point that planning permission has been obtained as this would leave schools and parents who are seeking places with uncertainty about the arrangements for longer than is necessary. Furthermore to delay in making a determination would take the time past the Council's closing date for primary applications which is 15 January 2012. The Code at paragraph 4.26 says a variation should only be made at that stage if it is unavoidable.

## Conclusion

18. The decision to increase the capacity of the School has already been taken by the Council. All matters relevant to this expansion were fully explored through the consideration of the statutory proposal. I have identified no factors that would lead me to do anything other than approve the consequential request to increase the PAN.
19. I was also requested to approve two changes to the oversubscription criteria. I have decided I should approve the first request which concerns the balance of

foundation and open places, but for the reasons given in paragraphs 14, 15 and 16 I do not approve the request concerning the use of attendance at the nursery as an oversubscription criterion.

### **Determination**

In accordance with section 88E of the School Standards and Framework Act 1998, I approve two of the three the requested variations to the admission arrangements of All Saints Benhilton Church of England Primary School in the London Borough of Sutton. I determine that for admissions in September 2012 the published admission number for the school shall be 60. I also approve the variation to increase the number of foundation places and open places to 42 and 18 respectively. I do not approve the introduction of a new oversubscription criterion giving priority to children who have attended the nursery located at the School.

Dated: 4 January 2012

Signed:

Schools Adjudicator: David Lennard Jones