

DETERMINATION

Case reference: ADA/002266

Objector: A Parent

Admission Authority: Kent County Council

Date of decision: 1 August 2012

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 Kent County Council for admissions to Bishops Down Primary School for admissions in September 2013.

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 Schools Standards and Framework Act 1998, (the Act), an objection has been referred to the Adjudicator by a parent, about the admission arrangements (the arrangements) for Bishops Down Primary School, (the School), a 3 -11 community primary school, for September 2013. The objection is to the lack of consultation and published information explaining the reduction of the published admissions number (PAN) from 60 to 30. The PAN was originally 30 but for the last three years it has been set at 60 to respond to greatly increased demand for places. Demand has not diminished but the PAN has reverted to 30, its original size. The objector states that this is not transparent, consistent or fair.

Jurisdiction

2. These arrangements were determined under section 88C of the Act by Kent County Council, (the Council), which is the admission authority for the School. The objector submitted his objection to these determined arrangements on 23 May 2012. 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 form of objection dated 23 May 2012;
 - b. the Council's response to the objection and supporting documents;
 - c. the School's response to the objection and supporting documents
 - d. the Council's composite prospectus for parents seeking admission to schools in the area in September 2012;
 - e. a map of the area identifying relevant schools;
 - f. confirmation of when consultation on the arrangements last took place;
 - g. copies of the minutes of the meetings of the governing body at which the question of the expansion and reversion of the PAN were discussed;
 - h. copies of the minutes of the meeting of the Council at which the determined arrangements were agreed;
 - i. a copy of the letter of 29 March 2012 informing the school that expansion would not take place;
 - j. the Ofsted inspection report for the school;
 - k. a copy of the determined arrangements;
 - l. a copy of the Kent Commissioning plan;
 - m. feasibility studies concerning expansion of the School;
 - n. population forecasts for the Tunbridge Wells area; and
 - o. minutes of the meeting of the schools forum at which the determined admissions arrangements were discussed.

I have also taken account of information received during a meeting I convened on 16 July 2012 at the School. This meeting was attended by two officers of the Council, the head teacher and chair of governors of the school and a parent.

The Objection

5. Bishops Down is a successful primary school with an Ofsted rating of good. In September 2010, the PAN was increased from 30 to 60 on a temporary basis to meet local demand. This increase was repeated in September 2011 and will be maintained for 2012. In 2013 it will revert

to 30 although the demand for places has not reduced. The objection to the arrangements is twofold. There was no consultation about the change back to a PAN of 30 and no rationale given for the decision at the time. This has resulted in a lack of clarity and transparency for parents. Nor are the arrangements consistent or fair given that in previous years high demand has been met by increasing the uptake. Paragraph 14 of the introduction to the Code says that admission authorities “**must** ensure that the practices and criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to understand easily how places for that school will be allocated”, but in this case reasons for the reversion are only now beginning to be given.

Background

6. In common with many other areas, Tunbridge Wells has experienced a substantial growth in demand for primary school places in recent years. Bishop’s Down, a good school, has been oversubscribed for some years. The governors have been in dialogue with the Council since 2009 about pupil places in Tunbridge Wells and as a result they agreed to two temporary increases in PAN in September 2010 and 2011.
7. An initial feasibility study carried out in 2009/10 found that the infrastructure at Bishops Down was suitable for permanent expansion. A request by the Council for a further temporary intake in 2012/13 was subsequently discussed by governors as was the question of permanent expansion. A permanent increase to two forms of entry was the preferred option of the governing body. Governors decided to agree to a third temporary increase in September 2012 while further discussion and feasibility studies took place regarding a permanent increase.
8. However, following another feasibility study, in March 2012 the Council decided not to proceed with this option. The reasons given included a negative response from Sport England on the possible reduction in size of the school’s playing field, the cost of improved access and buildings and the negative impact on local residents of further school traffic.
9. As set out above, the question of expansion has been under discussion between the Council and the School since 2009. At a succession of meetings since then the possible implications of temporary expansion as well as the question of permanent expansion have been raised. The feasibility study presented to the governing body in February 2010 showed that the infrastructure at Bishops Down was suitable for permanent expansion. It was in the light of this that the governing body voted to agree a two year expansion. They asked the Council to create a process to establish whether the school should subsequently remain a two form entry school or revert to a one form. This was not done.
10. In May 2011, the head teacher advised the governors that he had been approached by a parent who had seen a copy of the Primary Admissions Document for 2012 on the internet showing the planned

admission numbers for Kent schools. The document showed that the Bishops Down PAN for September 2012 was 60 and the parent queried the implications of this. At this point, the governing body had not yet been approached with a proposal to continue the temporary expansion. He queried this with the LA officer, who explained that he had made an error in copying over the previous year's data and that the figure should have been 30.

11. In December 2011 the Council again approached the School with a request for temporary expansion. The governing body expressed concerns about how the School would cope with the increased number of siblings from the previous two expanded years if there were no permanent expansion. Governors also noted that the Council's officer had not changed the planned admission number from 60 to 30 on the Council's website as promised.
12. At the same meeting, Governors were reminded that they had been promised that, were the Council to come back and ask for further expansion, it would be on a permanent basis. But this was not what they were now being asked to do. "There was a concern that if the governors agreed to another two years temporary expansion, the Council could still renege on a permanent expansion in two years' time, given the number of issues." The governors eventually agreed to one further year of two forms entry for September 2012 on certain conditions and subject to an agreed timetable of actions leading to a permanent two form entry. This did not materialise.
13. The minutes of the February 2012 meeting show that the Council "had been unable to confirm any permanent expansion plans". Nor was it able to provide any new information on either the permanent or temporary expansion plans.
14. In the meanwhile, the Council had been carrying out a further feasibility study. This returned an unfavourable verdict on the proposal on grounds of the unsuitability of the site, the required reduction in playing field space, access and traffic issues and the unlikelihood of obtaining planning permission.
15. Faced with the conclusions of the feasibility study, the Council decided that it would need to reduce the PAN to 30 for 2013. A report went to members on 19 March 2012, setting out the proposed determined arrangements. These were approved. An appendix attached to the report and dated 1 February 2012 lists the PAN for the School as 30.
16. On 29 March 2012 the School received a letter delivering the verdict of the second feasibility study. I quote; "following a comprehensive feasibility study by the KCC School Capital and Premises Development Unit, the local authority have decided that they are no longer intending to proceed with a physical enlargement of Bishops Down".
17. The minutes of the May 2012 governing body meeting confirm that the

September 2012 two form intake will be the last one.

Consideration of Factors

18. The factors I have considered include the nature of the consultation on the determined arrangements, the growth in demand for primary school places in the area and the Council's response to this, the impact on the School of the temporary expansion, traffic and travel issues and the position of parents in the area.
19. The Council consulted on the admission arrangements between 15 Nov 2011 and 13 Jan 2012 as it is required to do. The determined arrangements were published on 15 April. Despite their best endeavours, Council officers have not been able to provide detailed information on the consultation. It appears that "some links have been lost or deleted in error". They have been able to confirm that the school PAN consulted on was 60.
20. The final determined arrangements which were agreed by Cabinet determined a PAN of 30 for the School. The Cabinet report on the consultation and the agenda for the meeting at which the arrangements were determined are on the Council's website.
21. It therefore appears to be the case that the PAN of 30 was not consulted on. Since the PAN for the last three years had been 60 and even when asked to do so prior to the governing body agreeing to the final increase, officers had not reduced it to 30, it would be reasonable to assume that the PAN would continue to be 60. A change to 30 would therefore require consultation. This did not take place.
22. The purpose of consultation is to take various views into account and then determine arrangements in the light of those views. The determined arrangements may differ from those on which the admissions authority consulted because a change may be needed to take into account the views expressed during the consultation. In this case, there is no record of adverse views having been expressed during the consultation.
23. Births in Kent expanded by more than 20 per cent between 2002 and 2010. Current forecasts show that while in 2011, 9,500 primary places were needed in Tunbridge Wells, by 2016 it will be 10,100, an increase of 600. There has been a rapid expansion in demand for primary school places in the inner Tunbridge Wells area. The Council's preference figures for 2011 show Bishops Down to be heavily oversubscribed.
24. The Council has argued that, as it is a lengthy process to plan and build permanent capacity to meet increased demand, local authorities will often negotiate temporary enlargements at the more popular and successful schools. But the history of repeated temporary expansions at Bishops Down does suggest a piecemeal approach to what has clearly been an issue in the area since 2009.

25. Very recently, the Council produced a draft commissioning plan for education provision 2012-17. This argues in paragraph 4.20 for the expansion of popular schools, "We are committed to ensuring that every parent can choose a good or outstanding school for their child. Therefore, there is a strong presumption in this Plan that successful and popular schools will be supported to expand." Popularity with parents is noted as a key factor to be considered.
26. The draft commissioning plan goes on to propose the expansion of a number of primary schools in Tunbridge Wells. Bishops Down is not one of them. Two of the schools concerned are classed as satisfactory by Ofsted and there are some concerns about the location of others being too far from the central area where the increased demand is located. On the face of it, this does not appear to accord with the presumption that successful and popular schools will be supported to expand.
27. Meanwhile, the School is in the unenviable position of having admitted 60 children for three years and then reverting to 30. Following the three years of expansion there will be 18 siblings in 2013 and 24 in 2014 who are eligible for admission to the school. Coupled with this is the fact that the School is the lead in the Tunbridge Wells area for children with physical disabilities. Because of this, it generally takes in two children with statements of special educational need for physical disability. This further reduces the number of places available for local children who are not siblings. From September 2013, this will severely limit the number of places available for children living very close to the School. The School is anticipating a considerable number of appeals. It also expects to have large classes. Many parents will be disappointed in their applications to the School.
28. Issues about increased traffic in the area around the School figured in the Council's second feasibility study, which rejected permanent expansion. Car access to the school site poses particular difficulties. The School's own feasibility study acknowledged and explored these issues. It suggested some ways of responding to them. On the other hand, the paucity of places at the School for children living nearby from 2013 will almost inevitably lead to increased car use because of siblings from further afield being offered places and fewer children being able to walk to school.
29. The feasibility studies show that permanent expansion on the site poses significant challenges and would be costly. It is said that planning permission would be difficult to obtain, though given that this is a maintained school, one might expect that the Council would be in a position to assist in obtaining this. Consultees and proposed partners would need to agree some compromises for the proposed development to proceed. But this does not amount to an unequivocal view that expansion is impossible.
30. From a parental point of view, the implications of this history are deeply troubling. The minutes make it clear that governors had only limited

information about the Council's plans and intentions for the School and that such information as they did have was rarely timely. If that was the case for the governing body, how much can parents have known? It cannot have been clear to them at any point whether or not expansion was to be temporary or permanent and therefore what the implications would be for admissions to the school. Thus they were not in a position to make informed choices. To quote the head teacher in his response to the draft commissioning plan, "More importantly, parents would have been able to make well informed choices for their children's education had plans been agreed well in advance. In recent years, parents have been subjected to a great deal of uncertainty every year as schools have been unable to tell them in which schools additional places are available. Issues such as overall admissions numbers, sibling numbers and distance from school have caused a lot of anxiety."

31. Equally, from a parental point of view, the fact that the first feasibility study supported permanent expansion whereas the second rejected it, might lead to questions about the objectivity of the process. Moreover, at the time of writing, the school's website gives no information about why the PAN is to revert to 30 in 2013 despite that fact that the number consulted upon was 60. Nor do any of the documents on the Council's website.
32. Demand for school places in the area and at the School has increased significantly and remains high. For three years, the chance of gaining a place in the school and thus a foothold for further siblings increased significantly. In 2013, it is to drop back to its original level with no corresponding diminution in the number of children. How fair can this seem to those parents whose children are due to start school in 2013?
33. To all intents and purposes, the PAN for the School in 2012 was 60. This was the figure posted on the LA's website in 2011 from the outset. It was never changed and indeed is still shown as 60. This information was all parents had to go on, so from their point of view, the move to 30 in 2012 for admissions in 2013 was a change.
34. As such there should have been consultation. Local views should have been taken into account.

Conclusion

35. The objection on which I have to rule concerns consultation and the clarity and fairness of the arrangements. Parents have had no source of reliable information on what the admission arrangements at the School would be from year to year. They were not consulted about the 2013 PAN of 30 and when a decision was finally taken, they were given no information as to the rationale for it. The situation with regard to demand had not changed so it was not unreasonable for parents to expect the same higher number of places. The practices and criteria used to decide on the 2013 PAN in this case were not clear, consistent and objective.

36. The same is true of the wider picture with regard to public engagement with the issues of school place planning in the area and the failure to consult or clarify the situation for parents. Overall, even if this sequence of events had accorded with the letter of the Code, it would have sadly failed its spirit which stresses clarity and the importance of parental preference.
37. The School's governing body has lived with uncertainty about the intentions of the Council with regard to its PAN and its temporary or permanent expansion for the last three years. It was led to believe that permanent expansion was, at the least, likely. The history raises questions as to why the Council has acted as it has done over recent years in relation to the School and local parents.

Determination

38. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by Kent County Council for Bishops Down Primary School for admissions in September 2013.
39. 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: 1 August 2012

Signed:

Schools Adjudicator: Mrs Janet Mokades