



DETERMINATION

Case reference: ADA/2658

Objector: A member of the public

Admission Authority: The governing body of Bramley Church of England Aided Infant School, Surrey

Date of decision: 2 September 2014

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 Bramley Church of England Aided Primary School for 2015.

Further, in accordance with section 88I I have considered the arrangements for admissions in September 2015 and for 2014 and I determine that these do not conform with the requirements relating to admission arrangements.

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 objection

1. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act), an objection has been referred to the Office of the Schools Adjudicator (OSA) by a member of the public (the objector) about the admission arrangements (the arrangements) for 2015, for Bramley Church of England Aided Infant School (the school), a voluntary aided school for pupils aged 4 to 7 years. The objection is that the arrangements give priority to children who have attended the linked pre-school for at least three terms and question whether this is fair to all children. The arrangements for admission in September 2014 have also been brought to my attention.

Jurisdiction

2. The arrangements for 2015 were determined under section 88C of the Act by the governing body which is the admission authority for the school on 6 March 2014.

The objector submitted an objection to the determined arrangements for admission to the school in September 2015, on 6 June 2014. 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.

3. The objector also referred the arrangements for 2014. I have considered the arrangements for 2014 in relation to the matters brought to my attention and the arrangements for 2015 as a whole, using my power under section 88I of the Act.

4. In this case the referral has been made by a member of the public who wishes to remain anonymous. The party has met the condition of paragraph 24 of the School Admissions (Admission Arrangements and Co-ordination of Admissions Arrangements) (England) Regulations 2012. This requires that any person or body making an objection who wishes to remain anonymous must provide their name and address so that they are known to the OSA.

Procedure

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

6. The documents I have considered in reaching my decision include:

- the objection from a member of the public dated 6 June 2014;
- the school's comments on the objection dated 20 June and 17 July 2014;
- minutes of the governing body's meeting held on 6 March 2014 at which the arrangements for 2015 were determined;
- the determined arrangements for admission to the school in 2014 and in 2015;
- responses from the Diocese of Guildford (the diocese), dated 24 and 25 June 2014, with supporting documents;
- comments on the objection from Surrey County Council, the local authority (the LA) dated 19 June 2014;
- the composite LA prospectus for parents, 'Starting Primary School - Information for parents/carers 2014/15'; and
- the admission policy for Bramley Early Learning School, (BELS).

The Objection

7. The objection is to the oversubscription criterion that gives priority to children attending the pre-school who have been in attendance for at least three terms. The

objector says that young children are not permitted to attend the pre-school until they are toilet trained. Therefore if a child is summer born and thus young within the year group or has any special needs, s/he may not be able to fulfil the requirement for admission to the pre-school and would not be able to attend the pre-school for three full terms before the start of compulsory schooling. The objectors says that a working parent may also be disadvantaged if they require full-time care, as they will have to find an alternative provider for the time needed outside the school day and the school holidays. This would place certain children at a disadvantage if they subsequently sought to apply for a place at the school.

Other Matters

8. Having reviewed the arrangements as a whole for admissions in September 2014 and September 2015 as provided by the school, I considered other issues which may contravene the Code. These include the requirement to publish arrangements on the website once they have been determined and display them for the whole of the offer year; the need to provide with the arrangements all the information necessary for parents to complete an application; the requirement for the first oversubscription criterion to include previously looked-after children; the issue of priority given to siblings of children attending the nursery, and the request for information about both parents on the supplementary information form (SIF).

Background

9. The school is a Church of England aided infants school which has close links to the Holy Trinity Church, within the Diocese of Guildford, Surrey. It is a small one form entry school for children aged 4 to 7 years and is located in the village of Bramley just outside Guildford. The School Commissioning Team from the LA confirms that while the school's most recent net capacity assessment indicates that the minimum number of workplaces available is 81, the school has a capacity of 90 and an indicated admissions number of 30. The published admission number (PAN) is 30 and there are currently 86 pupils on roll. There is a linked pre-school on site, BELS and information on the school's website says that the pre-school is incorporated within the school and informs parents that most children move on from the pre-school into the school.

10. The school's oversubscription criteria can be summarised as follows:

- 1. Children in the care of the Local Authority.*
- 2. Children with an exceptional medical/social condition or which means they must attend Bramley Infant School.*
- 3. Siblings, i.e. a child who will have a brother or sister at Bramley Infant School/Bramley Early Learning School at the time of entry to the school.
(Parents are still required to apply for a place at the school.)*

4. *Children attending Bramley Early Learning School for at least 3 full terms prior to the date of admission*
5. *Children of families living within the Ecclesiastical Parishes of Bramley and Grafham. (See Appendix for map showing boundaries)*
6. *Children of families who can show membership of a Parish church within the Ecclesiastical Parishes of Bramley and Grafham.*
7. *Children of families living outside the Ecclesiastical Parishes of Bramley and Grafham, who can show membership of a Parish Church.*
8. *All other children whose parents wish them to attend Bramley C of E Aided Infant School.*

11. The pre-school is registered to provide child care and is run by the governing body of the school. Parents are requested to complete an application form with a £10 deposit and are advised that this will then be deducted from their first invoice. BELS provides four choices of sessions for parents to select from, a three hour morning session, or four hours with lunch included at an additional cost, a whole day session of six and a half hours and an afternoon session of two and a half hours. Parents are advised that Early Years Entitlement (EYE) funding (*"the Nursery Education Grant"*) covers up to 15 hours provision per week. Additional and extended sessions not included in the Nursery Grant Funding are charged at £4.15 per hour.

12. BELS has the following oversubscription criteria which it will apply in the event of oversubscription for places:

1. *Older children. (Children who will be 4 years old during that academic year)*
2. *Siblings of children in BELS or the school,*
3. *Children living within the village of Bramley.*
4. *Children living outside the village of Bramley.*

13. An exception to the criteria can be made if a child is a looked-after child or one who has special educational needs.

Consideration of Factors

14. In considering the objection I have noted that advice has been provided to the school by the LA and the Diocese.

15. Following receipt of the school's determined arrangements for 2014, the LA sent an email to the school on 22 February 2013 to alert the head teacher to comments in the Annual Report of the Chief Adjudicator and to make specific reference to oversubscription criteria in arrangements that afford priority for children who attend nursery or pre-school provision. *"The preference of parents for nursery provision prior to applying for a place for a child for the year in which the child*

reaches compulsory school age cannot usually be taken into account in oversubscription criteria. This is because to do so may in practice make attending particular nursery provision a condition for gaining a Reception Year place. Or, it may mean that giving financial support to particular nursery provision raises the chance of gaining a place at the school contrary to paragraph 1.9e) of the Code. It cannot be fair that a parent's decision about nursery provision either almost guarantees a place at a particular state-funded school for some children or prevents any possibility of gaining a place at that same school for others."

16. In 2013 the pattern of admissions to the school indicated that children had been admitted up to and including the final oversubscription criterion 8, *"All other children whose parents wish them to attend Bramley C of E Aided Infant School"*, in each of the intake years from 2009 to 2013. The LA says it did not feel it was therefore necessary to refer an objection. The school was advised that should the pattern of allocations change it would expect the governing body to review its arrangements. When the allocations were made in April 2014 the LA noted that for admission to the school in September 2014, places were only allocated up to criterion 5, that is, to families living within the parish boundaries; with 27 places having been allocated to children attending the pre-school. Any applicants with membership of a church within the parish boundaries, living outside the parishes and all other children would not have been considered.

17. When the LA received a copy of the school's determined arrangements for 2015 on 13 May 2014 it wrote to the school, in order to provide an opportunity for the admission authority to amend its arrangements. An email dated 23 May 2014 then advised, *".....I note from your 2014 arrangements that you have priority in criterion 4 for children who attend Bramley Early Learning School for at least three terms prior to the date of admission. It is the local authority's view that this criterion would not comply with the School Admissions Code.....I would therefore ask Governors to let me know by Friday 20 June whether or not it intends to remove criterion 4 so that the admission arrangements may now be considered lawful. Alternatively, if the school has a strong argument for retaining criterion 4 for 2015 admission I would be happy to consider that, but at very least, I would expect the school to consult on a change to their admission arrangements for 2016. ..."*

18. Minutes of meetings of the governing body provide evidence of discussions about concerns that local children were being disadvantaged because of the number of children in the pre-school who lived outside the community who had gained priority under criterion 4. The head teacher confirmed that the governing body is aware of the issues regarding the giving of priority in the admission arrangements for children attending a specific pre-school.

19. The diocese has also offered advice to the school on this matter and explained to me that although there is no official diocesan guidance as such, the

diocese ensures that schools have the latest advice based on clarifications of the Code, OSA judgements and the OSA's annual report. Evidence provided to me indicates that the guidance provided by the diocese is comprehensive and covers all aspects of consultation processes, determination of arrangements and key issues of note including the issue of giving of priority to children who have attended a particular nursery. An advice note explained to admission authorities that this practice can be unfair to local children or unfair to those parents who are unwilling or unable to take up a nursery place as this may have the effect of forcing parents to send their child to a nursery before compulsory school age is reached. *"Our view is that each case should be taken on its merits and no one judgement sets a precedent although if you wish to include this priority, you will need to think very carefully about its wording and potential effect on other applicants."*

20. The diocese said that all arrangements are scrutinised in detail and if necessary, a dialogue is held with the head teacher and/or Chair of Governors to raise relevant points. In this case, the link between the school and the pre-school was mentioned in emails of 3 and 12 December 2013 and 6 May 2014, and recently in a telephone conversation with the head teacher. The diocese agrees that the arrangements requires amendment, but says the school feels very strongly that its circumstances are unique and the governing body can therefore defend its decision.

21. The head teacher acknowledges that there were several discussions with the diocese and that the advice provided was shared with the governing body who felt that the school was in a unique position, since its ties with the pre-school are very strong and this is reflected in the management of the school and pre-school. Minutes of the meeting of the governing body held on 14 November 2013 refer to the 2015 arrangements and state, *"The head teacher told governors that the diocese had warned of the possibility of failing any challenges against criterion 4. But governors were not inclined to change it, and the draft policy as prepared was approved for consultation."*

22. There is clearly documented advice from both the LA and the diocese which the school acknowledges it has received. Minutes of meetings of the governing body provide evidence that advice was considered but was rejected on the grounds that the relationship between the school and the pre-school was unique, in the opinion of the school, for the following reasons:

- BELS (the pre-school) is an integral part of the school;
- There is shared accommodation for the pre-school and reception class and they join together for assemblies and sports day;
- Staff work in both pre-school and school and plan together;
- BELS staff attend school staff meetings and training;
- Appraisal of BELS staff is undertaken by the head teacher and the assistant head teacher; and
- Children attending BELS and paying for lunch join the school for lunch.

23. I must consider the objection in the light of the requirements of the Code for admission to the school. All early years providers will generally have admission arrangements but these are not subject to admissions law or to the Code.

24. The objector has expressed concern about the arrangements of BELS which require that all children are toilet trained before admission, as this may delay the admission of younger children or those with special educational needs. Such children might not have these independent care skills and thus be unable to complete three terms of attendance at the pre-school in order to gain priority for admission to the school. The arrangements for BELS clearly express the expectation that children will be toilet trained and be reasonably independent in self-care skills. However, the head teacher says there is flexibility to take into account attendance of less than three terms and the arrangements do not require that children have attended the pre-school for three full terms in order to gain priority in the arrangements for admission to the school.

25. When I looked again at the arrangements for admission to the reception year I concluded that the text is unclear on this matter of flexibility. Oversubscription criterion 4 states, *“Children attending Bramley Early Learning School for at least 3 terms prior to the date of admission. (This will include children starting during the autumn term within the academic year of their fourth birthday.)”* I asked for further clarification about whether this means that children are expected to start to attend the pre-school from the beginning of the autumn term, or whether children can be admitted at any point in that term, in which case they may spend just over two terms in the pre-school. In this case would such children still qualify for admission under criterion 4? I was advised that the general practice is that children start at various times according to their birthday, maturity and readiness to attend the pre-school and are not disadvantaged by the start date in the pre-school. Those children who spend just over two terms in the pre-school do qualify for admission to the school under criterion 4. The arrangements are not clear as required by the Code in paragraph 14 and are open to misinterpretation by parents.

26. The clarity of the current arrangements is important, but the question I must consider is whether the priority given to children attending the pre-school, in the arrangements for admission to the reception year, complies with the requirements of the Code. The admission policy for BELS advises parents that most children from the pre-school move into the Infant School. The admission policy for BELS states, *“In order to meet the priority requirement for admission to Bramley Infant School, children must attend the pre-school for at least 3 terms. (This will include children who start during the autumn term within the academic year of their fourth birthday), before they start in reception. We cannot, however, guarantee a place in Bramley C of E Aided Infant School.”*

27. Parents are not legally required to ensure their children attend any pre-school or other type of nursery provision, before starting school. In this case however, it is quite possible that some parents may feel compelled to seek a place at the pre-school, having learned from information on the school's own website that *"most children move from the pre-school into the school"*; seeing that the fourth oversubscription criterion gives priority for attending the nursery or from reading the LA's website that 27 of the 30 available places were offered to children attending the pre-school. In my view this information provides a signal to parents that one way of securing higher priority for a place at the school would be for children to attend BELS pre-school setting and that failure to attend the pre-school would be likely to mean that the child would have a low chance of being allocated a place in the school.

28. While the school points to what it calls its unique relationship with its pre-school, in my experience there are many schools that have strong relationships with a particular pre-school provider and therefore the reasons provided by the school do not describe relationships that are unique to this school or which constitute a compelling argument to support the need for priority to be given in the arrangements for admission to the school, to children attending BELS. There are arguments for continuity and familiarity with the school's expectations and ethos, but there are equally strong views that it is unfair for parents to feel compelled to send young children to a particular pre-school provision in order to have a reasonable prospect of admission to the school they prefer.

29. Paragraph 14 of the Code says, *"In drawing up their admission arrangements, admission authorities **must** ensure that the practices and criteria used to decide the allocation of places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."* In my view all families living in the local area should feel that they have a reasonable chance of gaining admission to their local village school without having to meet any pre-conditions such as seem to exist at this school in the form of the requirement for attendance for a specified period of time at BELS. This may not suit the particular circumstances of some families or the developmental stage of their child in relation to self-care skills at three years of age. In my view parents should have the freedom to seek a place for early years education at any nursery provider, for example nearer to their place of work or not to seek a place at all preferring children to be with other family members or for children to remain at home. I have therefore concluded for these reasons that criterion 4 is not compliant with the Code at paragraph 14 as it does not meet the requirement for fairness for children at the point at which their parents apply for a place for compulsory schooling.

30. I also note that in order for parents to make an application for a place at BELS they must pay a non-refundable deposit of £10 to reserve a place. Although this is subsequently allowed against fees for parents who are offered and take up a place at BELS, the deposit is non-refundable in the event that parents change their

decision to apply to BELS or change their mind about wanting their child to attend any early years provision. On the matter of financial contributions which are forbidden by the current Code, I note that in advice to parents about fees payable to the nursery, the policy makes clear that any provision over and about the EYE funded sessions will be charged at an hourly rate and parents can therefore choose whether or not to pay additional fees. Paragraph 1.9e of the Code says that admission authorities, “... **must not** give priority to children on the basis of any practical or financial support that parents may give to the school or any associated organisation.....” It is possible for parents to use the EYE funding and then to top this up by paying an extra amount, to secure provision of more than 15 hours at BELS. Parents must pay termly in advance. This option of making a payment in advance may not be open to all parents, some of whom may have to rely only on EYE funding.

31. Data indicate that places were offered to 27 children attending the pre-school which leaves very few places for children who do not attend BELS, as the PAN for the school is only 30. In the current oversubscription criteria, the school has devised criterion 4, “*Children attending Bramley Early Learning School for at least three terms prior to the date of admission....*” which in effect may well afford a greater priority to the parents of children who have given practical or financial support to the school than to the children of those parents who have, for whatever reason, not done so.

32. A further concern is that the admission arrangements for BELS would not be lawful if used for admission to the reception year, for example, if oversubscribed priority is given to according to age with older children having top priority. There is also a requirement to attend for a minimum of two sessions on two days per week, so there are conditions set which do not form part of the oversubscription criteria, a practice not permitted for admissions to schools. It is not fair or reasonable, that children might gain admission to BELS against criteria that would not be lawful for admission to the reception year, but having secured a place at BELS would then have priority for admission to the school.

33. In my opinion it cannot be fair that a parent’s decision about attendance and success in gaining a place at BELS either significantly increases their subsequent chances of gaining admission to the school for their children or significantly reduces the likelihood of gaining a place at the school if they do not attend BELS for whatever reason. I have concluded that the arrangements do not conform to the requirements of the Code in paragraph 14, in respect of fairness or with paragraph 1.9e in relation to financial support for the school or any associated organisation.

Other Matters

34. Having reviewed the arrangements as a whole for admissions in September 2015 and in 2014, I considered other issues which may contravene the Code. The first issue relates to the publication of arrangements on the school's website. When I checked the Parents Information Area of the website on 26 August 2014 the arrangements on display related to 2013. Once the arrangements for each year are determined by the governing body they must be published, so that parents and any interested person or body can refer to them. Paragraph 1.47 says, "*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 of the offer year (the academic year in which offers are made).....*" The school should have already published its arrangements for 2014 and for 2015 and must do so without any further delay.

35. The arrangements that are published relate to 2013 and currently provide the only reference point for parents. They refer to a map of parish boundaries, "(See *Appendix for map showing boundaries*)" but the appendix number has been omitted. The arrangements for 2015 that were sent to me also refer to a map as being available at appendix C and the head teacher provided a copy of the map. However, there is no map currently on the school's website and as this forms part of the information required by applicants and it must be published with the arrangements. Paragraph 14 of the Code says, "*.....Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.*"

36. The first oversubscription criterion gives priority to looked-after children. A subsequent note provides a full definition of this criterion that indicates to me the intention that previously looked-after children will also be given first priority as required by the Code in paragraph 1.7. In order for the arrangements to be clear and accurate on this point the first criterion must include both looked-after and previously looked-after children within it.

37. Oversubscription criterion 3 affords priority to children with a brother or sister at BELS or the school at the time of entry. Paragraph 1.9b of the Code states that admission authorities **must not** take into account any previous schools attended, unless it is a named feeder school. The pre-school does not provide compulsory education and cannot therefore be considered to be a feeder school for the purpose of affording priority to siblings.

38. I note that the SIF request information about both parents and this is not permitted. Paragraphs 1.9 f and 2.4 say respectively that priority **must not** be given based on marital status of parents and that a SIF **must not** ask for both parents to sign the form.

Conclusion

39. The Code makes no specific reference to whether or not a school can give priority to children who have previously attended pre-school provision but there are relevant paragraphs within the Code that relate to the need for overall fairness to all children in the arrangements. Having considered whether or not these arrangements meet the requirement for fairness I have concluded for the reasons outlined above that the arrangements are neither reasonable nor fair and must be changed.

40. I have also considered the arrangements as a whole for admission to the school in 2015 and have concluded that they do not comply with the Code in relation to the publication of determined arrangements, the provision of all information pertaining to a set of arrangements together in one place, the requirement to state clearly that previously looked-after children will have equal first priority alongside looked-after children, the prohibition of affording priority to siblings who attend BELS pre-school in the arrangements of the school and in the request for information about both parents on the SIF. All these matters also apply to the arrangements for 2014.

Determination

41. 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 Bramley Church of England Aided Primary School for 2015.

42. Further, in accordance with section 88I I have considered the arrangements for admissions in September 2015 and for 2014 and I determine that these do not conform with the requirements relating to admission arrangements.

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.

Date: 2 September 2014

Signed:

Schools Adjudicator: Mrs Carol Parsons