



DETERMINATION

Case references:	ADA3204, ADA3205, ADA3206, ADA3207 and ADA3208
Objectors:	Groups of parents and individuals
Admission Authority:	The Archer Academy Trust for the Archer Academy, Finchley, London Borough of Barnet
Date of decision:	30 September 2016

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2017 determined by the Archer Academy Trust for the Archer Academy, Finchley.

I have also considered the arrangements in accordance with section 88I(5). I find that there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

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 within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 28 February 2017.

The referral

- 1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), five objections have been referred to the adjudicator by groups of parents and individuals, the objectors, about the admission arrangements for September 2017 (the arrangements) for The Archer Academy (the school), a free school for children aged 11 to 16. The objections concern the consultation undertaken by the school and the selection of feeder schools in the oversubscription criteria.**

Jurisdiction

- 2. The terms of the academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the school are in accordance with admissions law as it**

applies to maintained schools. These arrangements were determined on 22 February 2016 by the Archer Academy Trust (the trust), which is the admission authority for the school, on that basis. The objectors submitted their objections to these determined arrangements before 15 May 2016. The objectors have asked to have their identities kept from the other parties and have met the requirement of regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of their names and addresses to me. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

3. The parties to the objection are the objectors, the trust and the London Borough of Barnet in its role as local authority (LA) for the area in which the school is situated.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
 - a. the objectors' forms of objection dated 8, 14 and 15 May 2016, together with subsequent emails and attached documents;
 - b. the admission authority's response to the objection and supporting documents;
 - c. further comments from the admission authority concerning the contents of emails from objectors and in response to my enquiries;
 - d. the comments of the LA on the objection and supporting documents;
 - e. maps of the area identifying relevant schools;
 - f. the application to the Department for Education (DfE) to establish the school;
 - g. confirmation of when consultation on the arrangements last took place;
 - h. copies of the minutes of the meeting at which the trust determined the arrangements; and
 - i. a copy of the determined arrangements.
6. I have also taken into account data from the DfE school performance tables and the 2015 annual school census.

The Objection

7. The objectors claimed that the consultation undertaken by the school before determining the arrangements failed to comply with the requirements set out in paragraphs 1.42 and 1.45 of the Code in a number of ways:
 - i) responses from the local community to the consultation were given less weight than those from parents;
 - ii) the consultation did not require respondents to say which schools they were from;
 - iii) the consultation was only available in English and many local families do not have English as a first language;
 - iv) responses to consultation were only possible on-line which would disadvantage low-income families with limited internet access;
 - v) some communication from the admission authority during the consultation may have been misleading;
 - vi) the determined arrangements are different from the arrangements that were consulted on; and
 - vii) the processing of consultation responses may have breached the Data Protection Act 1998.

8. The objectors also claimed that the priority given to children attending feeder schools did not comply with paragraphs 14, 1.8, 1.9 and 1.15 of the Code because:
 - i) the proportion of places allocated to children attending feeder schools outside of the local community is not reasonable, fair or objective;
 - ii) the selection of feeder schools disadvantages children from particular faith and ethnic groups and from low income backgrounds;
 - iii) it is not clear how reserved places not offered to children from feeder schools are redistributed;
 - iv) the selection of feeder schools gives priority to children based on support given in setting up the school; and
 - v) the reason for the selection of feeder schools is unclear.

9. The objectors also questioned the fairness of prioritising siblings whether they lived in the catchment area or not.

Other Matters

10. When I considered the arrangements as a whole it appeared to me that the definition of previously looked after children did not reflect the introduction by the Children and Families Act 2014 of child arrangements orders which replace residence orders. It also appeared to me that the arrangements did not include the requirement, found in paragraph 2.17 of the School Admissions Code, for admission authorities to make clear in their arrangements the process for requesting admission outside of the normal age group.
11. When I raised these matters with the trust it immediately acknowledged these omissions and said it would amend its arrangements if required by the adjudicator. It is required to do so by the Code and I will not refer to these matters any further.

Background

12. The school opened as a free school in September 2013. The application to establish the school said it was to address “*a significant lack of secondary school provision in East Finchley, West Finchley, Hampstead Garden Suburb and surrounding communities in N2, N3 and NW11.*” The school takes its name from a statue on East Finchley underground station.
13. The school is located on two campuses in East Finchley one for Years 7, 8 and 9 in Stanley Road and the other for Years 10 and 11 in Beaumont Close. The Stanley Road campus is in a new building while the Beaumont Close campus is in a refurbished building less than one kilometre away. Both campuses have a postcode of N2.
14. Since it was established the school has become increasingly popular and its previous oversubscription criteria (based on distance from the Stanley Road site) were leading to fewer children living outside the N2 postcode being offered places. The trust was concerned that the school was not serving the whole of the community it was established to serve and so consulted on new oversubscription criteria designed to maintain some priority for children living in N3 and NW11 postcodes by naming feeder schools in those areas. Following this consultation, new arrangements were determined for September 2017.
15. The admission arrangements are easily found on the school’s website. The school has a published admission number (PAN) of 150 and it is oversubscribed with 245 first preference applications for September 2016. The first 110 places are allocated according to oversubscription criteria which I have summarised below:
 - i) Looked after and previously looked after children.
 - ii) Founders’ children.
 - iii) Siblings of children at the school.
 - iv) Children of members of staff.

- v) Children living in postcode areas N2, N3 and NW11 which is described as the priority catchment area. Children living closest to the school receive highest priority.
16. Priority for the remaining 40 places is given to children who attend four named feeder schools and who live in the priority catchment area with priority within this group being given to those living closest to the school. Two of the feeder schools have a quota of 15 places and the other two each have 5 places available. If the quota is not reached from any one school, the places are offered to children at the other named schools. If any of the 40 places are not taken up, they are allocated to other children living in the priority catchment area on the basis of proximity to the school.
17. If any of the 150 places are not filled by children from the priority catchment area, they are offered to other children with those living closest to the school having priority. Random allocation is used as the tie-breaker.
18. The four named feeder schools are Brookland Junior School, Garden Suburb Junior School, Manorside Primary School and Tudor Primary School. Fifteen places are allocated to each of the first two schools and five to each of the last two reflecting their relative sizes. When the trust consulted on the arrangements Martin Primary School was proposed as a fifth feeder school with 15 places being reserved for children attending it.
19. The other differences between the oversubscription criteria which were determined and those consulted on were: the addition of a clause limiting the feeder school places to children who lived in the three postcodes and a more precise definition of the measurement of distance.

Consideration of Case

20. During consideration of this case I have been presented with a great deal of correspondence from the parties to it. It is clear from this correspondence that many parents living in the postcode N2 have very strong opinions about the school's admission arrangements and perceive them as unfair and unreasonable because they ensure that some children who live in postcodes N3 and NW11 will be offered places even though they live farther away from the school than some children living in N2 who may be unsuccessful in gaining places.
21. The objectors have presented arguments that the consultation undertaken by the trust before introducing the arrangements was flawed. Furthermore they argue that the decision to adopt admission arrangements for 2017 which reserved 40 places for children attending four feeder schools, none of which was in N2, could not be justified on the basis of the consultation undertaken.
22. They argued that the selection of feeder schools disadvantages children from particular faith and ethnic groups and from low income backgrounds; that it was unclear how "the quota" of places not offered to children from feeder schools are redistributed; that the selection of feeder schools gave priority to children based on support given in setting up the school and the

reason for the selection of feeder schools was unclear. The final part of the objection was to all siblings having priority for places, not just those living in one of the three postcodes N2, N3 or NW11.

23. In considering these objections I have posed myself six key questions the answers to which will address most aspects of the objection. The questions are whether:

- i) the aim of ensuring children from N3 and NW11 are offered places at the school is fair and reasonable and therefore complies with Paragraph 14 of the Code;
- ii) the consultation complied with paragraphs 1.42 to 1.45 of the Code;
- iii) the arrangements determined by the trust following consultation could be justified, that is, were they reasonable as required by paragraph 14 of the Code;
- iv) the arrangements disadvantage any social or racial groups as prohibited by paragraph 1.8 of the Code;
- v) the arrangements discriminate on the grounds of faith;
- vi) the arrangements are fair as required by paragraphs 14 and 1.8 of the Code to children who live in N2; and
- vii) the arrangements are fair as required by paragraphs 14 and 1.8 of the Code to children who live in N3 and NW11 and elsewhere?

The aims of the arrangements

24. The reason the trust proposed to introduce feeder schools into the oversubscription criteria was so the school would continue to offer places to children living in postcodes N3 and NW11 as well as to those living closer to the school buildings in postcode N2. I will consider whether the aim itself is fair and reasonable and therefore complies with Paragraph 14 of the Code which says "*In drawing up their admission arrangements, admission authorities must ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.*" and Paragraph 1.8 which says that: "*Oversubscription criteria must be reasonable, clear, objective, procedurally fair...*".

25. The first two paragraphs of the application to establish the school read

"This Free School bid is the culmination of a long-standing campaign by successive MPs, councillors, primary school governors and local parents to address a significant lack of secondary school provision in East Finchley, West Finchley, Hampstead Garden Suburb and surrounding communities in N2, N3 and NW11.

The need is for a co-educational, non-selective and non-denominational school for 11-16 year olds."

26. I have noted from the DfE database called Edubase, that there are three other secondary schools in these three postcodes, one is a catholic school, one is a selective girls school and the third is a boys school. The school remains the only non-selective school without a religious character for boys and girls aged 11 to 16 in the area.

27. The application quoted data for seven primary schools, Brookland Junior, Garden Suburb Junior, Holy Trinity CE Primary, Manorside Primary, Martin Primary, Moss Hall Junior and Tudor Primary. These are all within the three postcodes and are less than two miles from the Stanley Road site. In the section on admissions, it says that all three postcodes will be given priority if the school is oversubscribed and states an intention to address parents' dis-satisfaction when siblings cannot attend the same school.

28. One point in the application where a narrower view is taken of the area the school will serve is when data from just East Finchley is used to illustrate the demographic characteristics of the area the school is intended to serve, although it does say that East Finchley is "fairly typical" of Barnet. In the measure of demand survey the proportion of responses from each postcode is shown below. Rounding errors lead to the total exceeding 100 percent.

N2	N3	NW11	Other
43%	14%	27%	17%

29. Under the school's previous arrangements most places were offered to children living within the three postcodes on the basis of proximity to the school. I have constructed the table below from data in the consultation report. This illustrates that, unless the child has an education and health care plan (EHC plan), is or was looked after, is a sibling, or has a parent who was a founder of the school or a teacher at it, then the chances of obtaining a place on the grounds of living in N3 or NW11 reduced between 2013 and 2016.

	2013	2014	2015	2016
Proportion of places offered to N2	33%	45%	54%	75%
Proportion of places offered to N3	17%	21%	23%	11%
Proportion of places offered to NW11	11%	25%	13%	7%

30. The trust has told me that the location of the school, which combined with arrangements which give priority on the basis of distance from the school has led to the above trend, was identified a year after the DfE approved the application to open the school. The trust has said that in the initial allocation for September 2016, no children from outside N2 were offered places on the basis of where they lived.

31. From the above evidence, it is clear that the school was established to serve all three postcodes and provide a type of school not previously available in any of those postcodes. The school remains the only state-funded coeducational, non-selective and school without a religious character located in those postcodes. Unless the admission arrangements were changed its location would lead to the school only serving N2 if it continues to be as popular with families living in that postcode as is currently the case. I am of the view that it is fair and reasonable for the admission arrangements (including the oversubscription criteria) to seek to ensure that children from all three postcodes continue to be offered places at the school. I do not uphold those parts of the objection concerning the continuing of priority for children living in N3 and NW11.

Consultation

32. The Code sets out the requirements for consultation on admission arrangements in paragraphs 1.42 to 1.45. The first of these paragraphs says that admission authorities are required to consult on their arrangements once every seven years or when changes are being proposed. The trust was proposing to make changes to its arrangements for 2017 and therefore it was required to consult and it did so.

33. Paragraph 1.43 sets out requirements for the length of consultation and when that consultation must take place. The consultation took place between 1 December 2015 and 31 January 2016. This meets the requirements of the Code and none of the objectors suggested it did not.

34. Paragraph 1.44 lists who must be consulted:

“a) parents of children between the ages of two and eighteen;

b) other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admissions;

c) all other admission authorities within the relevant area (except that primary schools need not consult secondary schools);

d) whichever of the governing body and the local authority who are not the admission authority;

e) any adjoining neighbouring local authorities where the admission authority is the local authority; and

f) in the case of schools designated with a religious character, the body or person representing the religion or religious denomination.”

35. The list of consultees and the communications to them in the trust's report on the consultation process reflects the above list. The consultation elicited 1729 responses from a range of stakeholders and received coverage in the local press and on social media. I find it difficult to think that any statutory consultee would not have been aware of the consultation. I am satisfied that the requirements of paragraph 1.44 of the Code have been met.

36. The requirements for the method of consultation are set out in paragraph 1.45 of the Code, *“For the duration of the consultation period, the admission authority must publish a copy of their full proposed admission arrangements (including the proposed PAN) on their website together with details of the person within the admission authority to whom comments may be sent and the areas on which comments are not sought. Admission authorities must also send upon request a copy of the proposed admission arrangements to any of the persons or bodies listed above inviting comment. Failure to consult effectively may be grounds for subsequent complaints and appeals.”*
37. In addition to publishing its proposals on its website and writing to the statutory consultees, the trust emailed 853 people who subscribe for information from the school; it held a public meeting and promoted the consultation on social media. The trust also provided consultation documents targeted at parents of children at specific primary schools and attended meetings at some primary schools.
38. The first matter in the objection is that responses from the local community to the consultation were given less weight than those from parents. It is clear from the report on the consultation that the trust took into account many factors in reaching a decision about its arrangements. However, as this is a consultation about children, then I would expect parents’ views to be an important consideration and to be given considerable weight. I would not expect weight to be given by the admission authority to comments seen on flyers distributed by opponents of the proposed arrangements that house prices would be adversely affected.
39. The next criticism of the consultation process was that the consultation form did not require respondents to say which schools they were from. I have looked at the on-line consultation form used by the trust. There was the opportunity for respondents to state which school or organisation they were associated with. This was not a mandatory field; however, 1063 respondents identified as being associated with a specific school which is a sufficient number to allow meaningful analysis of the returns using this characteristic.
40. A further matter raised in the objections was that the consultation was only available in English and many local families do not have English as a first language. In its response the trust said that it had *“discussed the consultation process with the senior leaders of the local primary schools and they did not suggest that materials should be provided in other languages.”* The trust provided figures, which I have confirmed as agreeing with those in the DfE performance tables, showing that the proportion of children whose first language is not English attending local primary schools ranges from 42.2 percent to 72.6 percent. This does not mean that as few as 27.4 percent of parents at some schools would understand the consultation document, however it indicates that a significant proportion may not. I do not think it satisfactory to decide not to provide consultation material in other languages on the sole basis that primary school leaders did not suggest it.

41. In considering this aspect of the objections I have noted paragraph 1.1 of the Code which says “*Admission authorities are responsible for admissions and must act in accordance with this Code, the School Admission Appeals Code, other laws relating to admissions, and relevant human rights and equalities legislation.*” I have also noted the guidance from the Government Equalities Office and the Equality and Human Rights Commission. Given the proportion of pupils at local primary schools whose first language is not English, I am of the view that it would have been helpful, although not essential, to provide information about the proposed arrangements and how to make a comment on them in other languages on request. I have no evidence from either the objectors or the trust that any requests for information in other languages were made or whether the trust would have been able to satisfy any such requests.
42. Whether the availability of consultation materials in other languages would have had a material effect on the outcome of the consultation is another question. The objectors provided no evidence of any individuals not being able to put forward their views because of this and the trust did not collect data on any protected characteristics of respondents.
43. The data on English not being the first language shown in the table below does not support the objectors’ view that parents at Martin Primary School were affected by the lack of information in other languages more than parents at other schools.
44. Edubase identifies 16 state-funded primary schools (excluding infant schools) with postcodes N2, N3 or NW11. The proportions of children whose first language is not English or who have been eligible for free school meals at any time during the last six years are tabulated below using data from the DfE performance tables.

School		Religious character if any	English not first language %	Free school meals %
Alma Primary	N2	Jewish	13.3	0.0
Holy Trinity CE Primary School	N2	CE	23.1	24.9
Martin Primary School	N2	-	42.2	24.1
Akiva School	N3	Jewish	11.9	0.7
Chalgrove Primary School	N3	-	63.4	26.1
Manorside Primary School	N3	-	54.5	24.6

Moss Hall Junior School	N3	-	42.6	21.3
Pardes Junior School	N3	Jewish	10.7	10.2
St Mary's CE Primary School	N3	CE	35.5	5.1
St Theresa's Catholic Primary School	N3	Catholic	36.2	10.5
Tudor Primary School	N3	-	72.6	34.3
Brookland Junior School	NW11	-	46.1	15.6
Garden Suburb Junior School	NW11	-	49.7	20.9
Menorah Primary School	NW11	Jewish	21.4	4.6
Rimon Jewish Primary School	NW11	Jewish	32	7.7
Wessex Gardens Primary School	NW11	-	91.7	38.7

45. Similar considerations apply to the complaint that responses to consultation were only possible on-line which would disadvantage low-income families with limited internet access. Again the objectors claimed that parents at Martin Primary School would be most affected by this.
46. Across England 26.4 percent of pupils have been eligible for free school meals at some time in the last six years. This figure can be taken as a measure of low-income. Only two schools in the table above have a higher than average proportion of children from low-income families and neither is Martin Primary School which has a similar figure to most of the other schools without a religious character.
47. In the report on the consultation there is reference to letters containing comments on the proposal as well as emails and the on-line questionnaire. Meetings were also held at which views could be expressed. I am satisfied that anyone without access to the internet who wished to express their views would have been able to do so through one of the other communication channels. The evidence suggests that parents of children at Martin Primary School have a similar level of income to those at other schools and therefore could reasonably be expected to have a similar level

of access to the internet.

48. The objections said that some communication during the consultation may have been misleading. Objectors said that letters told parents at Holy Trinity CE Primary School, which is next-door to the Stanley Road site, and Martin Primary School that they need not worry as the proposed changes would not affect them. This they claimed led to a sense of complacency and few responses to the consultation from parents at those schools. I have reviewed the letters sent to parents at those two schools, the tone of the letters is reassuring, they are factually correct, encourage parents to respond to the consultation and to attend the meeting at the school. There were 150 responses from respondents identifying with these two schools in N2 and 765 from respondents identifying with schools in NW11; however the overall number of responses from the two postcodes were similar at 662 and 703 respectively suggesting a greater number of responses from the wider community in N2. There were 158 responses from the third postcode, N3. From the report on the consultation I am satisfied that views from both areas were considered and decisions were not made solely on the basis of the numbers of respondents supporting the proposal or not.
49. Another objector said the consultation was flawed because the trust did not publish the criteria it would use to analyse consultation responses or the models that were used to consider the implications of different oversubscription criteria. The trust made it clear in the consultation materials what it intended to achieve from the proposed change, in my view this amounts to the criteria against which consultation responses would be assessed. There is no requirement for any underlying models to be published in consultation material, but there was opportunity for people to ask questions on the issue during the consultation.
50. One of the objectors questioned whether the processing of consultation responses may have breached the Data Protection Act 1998. The trust used internet protocol (IP) addresses to help identify 98 duplicate responses to the consultation. I am of the view that it is right for the trust to identify duplicate responses and that IP addresses provide one way of finding potential duplicates along with home address, postcode and name. Whether in doing so the trust breached the Data Protection Act is a matter for the Information Commissioner.
51. It is possible for an admission authority to consult perfectly and yet determine arrangements that do not comply with the Code. It is also possible for an admission authority to fail to meet the Code's requirements as to consultation and yet determine arrangements which are completely compliant with the Code. In this case I can find just one justified criticism of the consultation, which is the lack of availability of information in other languages. I do not consider that had this been available it would have elicited any different views which might have changed the conclusion reached by the trust. I find that the trust undertook one of the most comprehensive school-led consultations I have seen which complied with paragraphs 1.42 to 1.45 of the Code. I do not uphold the objections relating to the consultation.

Determination of the arrangements

52. All of the objectors complained that the determined arrangements are different from the arrangements that were consulted on. They argued that further consultation should have been undertaken on the changes the trust made to the proposed arrangements before the arrangements were determined.
53. At the end of the consultation period the trust developed two further versions of the arrangements which reflected comments made during the consultation. The first new option was to allocate 50 percent of places to children living in N2, 20 percent to those living in N3 and 30 percent to those living in NW11 with priority within each postcode being given to children living closest to the school. This appears to be designed to give effect to the suggestion made by the LA in its response to the consultation that *"Your aim of providing local school places to children in particular postcodes can be met by having catchment areas and distance criteria."*
54. The second new option was the one eventually determined by the trust and the subject of these objections. It takes account of responses to the consultation in that it added in a requirement that children being considered under the feeder school criterion had to live in one of the three postcodes as well as attend the school. More contentious was the removal of Martin School as a proposed feeder school on the grounds that children attending that school would be likely to be offered places on the basis of where they lived.
55. The trust commissioned an external consultant to undertake an equality impact assessment (EIA) of what were at this point four options: the status quo, the option consulted on and the two new options described above. This assessment estimated the expected allocation of places under each of the four options for 2017 and 2020 under the feeder school and distance criteria. It then considered the implications for race, religion or belief and socio-economic status of each option.
56. The objectors made a number of criticisms of the model used in the EIA, particularly in regard to the number of siblings used in the estimates. To my mind the purpose of such models is not to predict the outcome of a future allocation, but to allow comparison between the options under the stated assumptions. Had a different number of siblings been assumed, different figures would have been produced, and possibly different patterns observed. The number of siblings used in the model was based on the median age range of siblings at local schools, it is not a figure without any basis and as such it was reasonable to use it.
57. The EIA itself recognised the limitations of the available data. Data on faith is not collected at school level; the EIA used ward level data and associated the schools with the wards in which they are situated. The conclusions drawn are about the number of children who would be allocated places from schools with a religious character with statements such as the option under consideration *"would be more likely to benefit white students, and non-Christian students."* I am not convinced that all of

these statements can be justified on the data available.

58. While it may be possible to level criticism at aspects of the EIA, it was undertaken by a credible individual and demonstrates the trust's awareness of the need to consider such issues.
59. The trust produced an 82 page report summarising the consultation and the EIA. From this it can be seen that the trust took into account all consultation responses, background data and equalities issues. I have noted that most, if not all, issues raised in the objections are referred to in the report.
60. In my view the determined arrangements are not sufficiently different from those consulted on to have made further consultation necessary and there was no time to do so within the statutory time frame set in paragraph 1.43 of the Code.
61. The arrangements were determined after much thought about the issues and the impact they would have on different groups of children were considered. It is possible to see how comments received during consultation are reflected in the determined arrangements. I am satisfied that the way in which the trust determined the arrangements was lawful and I do not uphold the parts of the objections concerning determination.
62. There were clearly strong views in the community about the most appropriate admission arrangements for this school and I suspect that if arrangements had been determined that reflected the wishes of the objectors then another group of parents may have lodged objections with the adjudicator. I do not uphold those parts of the objections concerning the determination of the arrangements.

Disadvantage to social or racial groups

63. Paragraph 1.8 of the Code says "*Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs*".
64. The annual school census collects details about the ethnicity of children attending schools. The most recently published data is from 2015 from which I have created the following table for the 16 primary schools within the three postcodes.

School	Faith if any	White British %	Other White %	Other	Unclassified
Alma Primary	Jewish	Data not recorded			
Holy Trinity CE Primary School	CE	50.3	14.1	35.1	0.5
Martin Primary School	-	37.9	21.5	40.1	0.4
Akiva School	Jewish	72.9	19.4	2.3	5.5
Chalgrove Primary School	-	17.1	34.9	47.4	0.6
Manorside Primary School	-	27.5	18.0	52.9	1.4
Moss Hall Junior School	-	29.6	19.0	51.1	0.3
Pardes Junior School	Jewish	68	7.1	1.0	23.9
St Mary's CE Primary School	CE	40.3	14.4	45.1	0.3
St Theresa's Catholic Primary School	Catholic	29.5	44.9	25.6	0.0
Tudor Primary School	-	12.4	22.0	64.2	1.6

Brookland Junior School	-	44.2	25.4	30.5	0.0
Garden Suburb Junior School	-	22.0	29.6	45.2	3.1
Menorah Primary School	Jewish	66.9	31.4	0.9	0.9
Rimon Jewish Primary School	Jewish	66.0	30	4.0	0.0
Wessex Gardens Primary School	-	3.6	22.6	73.8	0.0

65. The five Jewish schools in the area have a significantly different pattern of ethnicity from the other schools. If for this reason the Jewish schools are excluded from the list, the median proportion of pupils classified as “White British” is 29.5 percent at St. Theresa’s Catholic Primary School. Three of the four feeder schools have a lower proportion of “White British” pupils than this and just one, Brookland Junior School has a higher proportion. Any bias in the selection of feeder schools would appear to be towards minority ethnic groups.

66. The objectors claim that the omission of Martin Primary School from the feeder schools disadvantages pupils from minority ethnic groups. With 37.9 percent of its pupils classified as “White British”, most of the non-Jewish schools have a higher proportion of pupils from minority ethnic groups than Martin Primary School does. I do not think the objectors’ claim is sustainable and I do not consider that the selection of feeder schools disadvantages children from minority ethnic groups.

67. The proportion of children eligible for free school meals is a common proxy measure of low income. This has been tabulated in the section on consultation. The Jewish schools show a very different pattern of free school meal eligibility to the other schools. Excluding the Jewish schools, Martin Primary School is the median and there are two feeder schools with a higher proportion of free school meal eligibility and two with lower. I do not see any indication of bias on the grounds of low-income here and I do not uphold those parts of the objection concerning social and ethnic groups.

Matters of faith

68. From the LA's response to the consultation it is clear that they had reservations about the feeder schools in the oversubscription criterion. The LA's concerns centre on the trust's stated intention that none of the feeder schools should be schools with a religious character because it did not want to give any priority for admission on the grounds of faith, even if this was indirectly. The LA considered this was possible indirect discrimination against Christian children. The LA also pointed out that parents may have not chosen to send their child to a school with a religious character, but found that a place had been allocated at one due to the pressure on places in the area.
69. The trust quoted data from a Church of England school, Holy Trinity CE Primary School, in support of its application to establish the school. However, that school is in N2 and children attending it would be offered places on the same basis as those at Martin Primary School as indeed would children from Alma Primary School in N2 which is Jewish.
70. In the other two postcodes there is one Church of England School, St Mary's and one Catholic school, St Theresa's. There are also four other Jewish schools in those postcodes. As the LA said, some children may be at schools with a religious character not through choice, but because that was the nearest school to their home with places available. Other parents may have placed their children in such a school because of its reputation, location or other factors not on the grounds of faith, similarly religious families may have chosen schools without religious character for similar reasons.
71. The Equalities Act 2010 permits admission authorities of schools with a religious character to discriminate on the grounds of religion or belief in relation to admissions. This school does not have a religious character and so the trust may not discriminate on such grounds in relation to admissions. Paragraph 1.8 of the Code specifically says that oversubscription criteria must comply with equalities legislation.
72. The Equality Act provides at section 13 that "*a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*" Religion or belief are protected characteristics. By the trust saying that it will not name schools with a religious character as feeder schools it is directly discriminating against at least some of the children on the basis of their religious belief. While the trust is saying it did not want to give priority to any child because of religion, by explicitly ruling out children attending a denominational school from receiving any priority on the basis of attending a school with a religious character, it is treating them less favourably because of their belief.
73. I do not think that the trust has any intention of discriminating on the grounds of religion or belief. It is clear to me from the documents I have seen that the trust intends that no child will have any priority for a place at the school on the grounds of religion. However, by explicitly ruling out faith

primary schools as feeder schools, it has leant too far and has unfairly reduced the likelihood of children from families with a religious belief being offered a place at the school. This approach also penalises those who found themselves placed at schools with religious character, or chose such schools on grounds other than faith.

74. The objections included a statement that Martin School has a significant proportion of children from the Muslim faith and therefore not including it as a feeder school was particularly unfair to Muslim children. The school census does not collect information about faith. I can find no more reliable data about faith than the ward level data that was used in the EIA. Wards and postcodes are not the same geographic areas and I have expressed my concerns about drawing conclusions about the faith profile of schools from this data in the paragraphs about determination. However, it is noticeable that while there are wide variations in the proportion of Christians and Jews across the wards, the proportion of Muslims is stable at between five and eight percent. It therefore seems unlikely to me that there would be a disproportionate impact on Muslims either living in N2 or attending Martin Primary School as suggested in the objections.
75. I partially uphold parts of the objections relating to discrimination on the grounds of faith through the choice of feeder schools.

Fairness to children in N2

76. Under the new arrangements as many as 40 fewer children who live in N2 will be offered places at the school. Their places will be taken up by children who live in N3 or NW11 freeing places at other secondary schools for N2 children to go to. To consider whether this is fair or not I have looked at the location of other secondary schools in the area. Some of these schools were referred to in the objections.
77. While there are few other state-funded secondary schools in the three postcodes N2, N3 and NW11 themselves and those schools are single-sex, selective or schools with a religious character, Edubase identifies¹² other secondary schools within two miles of N2 and 31 within three miles of N2. These include a range of different types of schools. One of the objectors referred to an increased carbon footprint caused by N2 children travelling to other schools if they could not attend their nearest school and had to travel to alternatives which were farther away.
78. Having looked at the locations of the 31 schools on a map, I think it is as acceptable for children to travel to one of these schools from N2, as it is from N3 or NW11. Indeed, before the establishment of this school, it must have been the case that more children would have made such journeys. Given the availability of public transport in urban areas, I do not think there would be any appreciable increase in carbon or other emissions from vehicles as a result.
79. Objectors made the point that some children may live in N2 and attend a primary school in another postcode and if that was one of the feeder schools, they would have “*two bites at the cherry*” and could be offered a

place on the basis of either where they lived or which school they attended. The trust commented on this saying "*Whilst the parents may consider that a different method of allocating places would be better, particularly for N2 families, that does not mean that the Trust's arrangements are unlawful.*" The law as expressed in paragraph 14 of the Code requires arrangements to be fair. While most children who live in N2 are just in the pool for the 110 places, some may also be in the pool for the remaining 40. I do not consider this to be fair.

80. Some objectors raised the question of the proportion of places for which priority was given to children who did not live in N2 through the feeder schools. One objector quoted data received from the LA regarding the number of first preferences for the school expressed for September 2016. Of the 215 first preferences, 115 were from N2, 54 from N3 and 46 from NW11. As percentages these are 53, 25 and 21 percent respectively. The data for 2015 showed a similar pattern with 46, 30 and 24 percent of first preferences coming from each postcode.
81. The trust has estimated that 70 children will be offered places under criteria 1, 2, 3 and 4; these children could live in any of the postcodes. This leaves 80 places to be allocated under the remaining criteria. If it is assumed that all children attending a primary school live in the same postcode area as the school, then 40 places will be offered to children in N3 and NW11 and 40 to children in N2. This split appears to reflect the pattern of parental preferences in the area with about half of first preferences being from N2. However, as noted above, not all children who attend a primary school necessarily live in the same postcode as the school.
82. If, as some objectors have suggested, the trust has underestimated the number of siblings, then unfairness could be claimed for children in N2. If however the trust has overestimated the number of siblings, then the benefit is the other way. As explained elsewhere in this determination, I consider the trust's estimate of the number of siblings to be reasonable. I will return to the distribution of places between N3 and NW11 later.
83. Objectors were unhappy that siblings were given priority no matter where they lived and considered this unfair to children who live near the school in N2. One of the reasons given by the school's founders in the application to open the school was the dis-satisfaction of parents who could not get their children into the same school. This appears to me to be a founding principle of the school alongside the intention to serve all three postcodes. Only in 2013, the year the school opened, did less than 90 percent of the children admitted live in the three postcodes. The number of siblings who might live outside of the three postcodes would, therefore, appear to me to be small.
84. There may be some cases, as described by the objectors, where well-off parents move into property near the school and having gained a place for the eldest child move away with younger siblings being admitted to the school ahead of local children. There could however be other families who through no fault or design of their own are forced to move away, or are

rehomed.

85. The school was established with the intention of admitting all siblings, and this does not appear to be limiting the number of local children who are offered places. In the circumstances of this case I do not consider the sibling criterion unfair.
86. I do not find the arrangements are unfair to children living in N2 and do not uphold those parts of the objections which suggest they are.

Fairness to children living in N3 and NW11

87. While the objections mainly concerned perceived unfairness to children who live in N2, I have also considered any potential unfairness to children who live in the other two postcodes, or outside of all three.
88. Priority in the oversubscription criteria for children who live outside of the three postcodes is not affected by the change in admission arrangements. Had the trust not acted on the comments received during consultation and added the requirement that to meet the feeder school criterion, they had to be resident in one of the three postcodes, this could have been an issue. Children who are looked after or were looked after must have first priority wherever they live. Children of members of staff and founders who live outside the postcodes will be small in number and their priority is permitted by the Code and the school's Funding Agreement respectively and I think is reasonable and fair for them to have the level of priority which they do.
89. Objectors questioned the basis on which the feeder schools were chosen. In the consultation material the trust said it aimed to "*support children at our local primary schools, in the priority postcodes, to move to secondary school together.*" The trust said in the consultation material that the original five possible feeder schools were chosen because they were within one and a half miles of the school, located in the priority postcodes and reflected the trust's "*non-denominational, non-selective and co-educational ethos.*" Reference was also made to "*deliver[ing] a successful Year 6 transition programme for our students by forging stronger links with local primary schools.*" The number of places for each of the feeder schools was based on five places for each Year 6 class, which the trust considered to be the minimum number for the children to transition as a group and to build a relationship with all of the feeder primary schools. The trust also took into account the number of applications from each primary school in previous years and how many places had been allocated to children from each primary school.
90. When viewed on a map, the four named feeder schools are the closest non-faith primary schools in N3 and NW11 to the school. It is not therefore surprising that they have sent more children to the school than others in previous years, as children living closest to the school had priority. There are three other non-faith primary schools in these postcodes, data from one of these, Moss Hall Junior, was used in the free school application and therefore appears to have been regarded by the trust as part of the community the school was established to serve. The other two, Chalgrove

Primary and Wessex Gardens Primary are farther away, but will contain children living in the two postcodes. Under these arrangements, some of these children who might live closer to the school than children at the named feeder schools would have reduced priority.

91. Voices representing these children are not found in the objections, or in the consultation. It may be that these schools serve parts of N3 and NW11 which are well located to gain priority for places at other schools, or that children attending these schools have always had low priority based on their address and so have little expectation of being offered a place. Given the scope and high profile of the consultation I am satisfied that if there had been significant concerns in these areas, they would have been raised.
92. Earlier in this determination I noted that the proportion of places for which priority is given to children attending feeder schools in N3 and NW11 taken together was in line with the proportion of first preferences from families living in those postcodes when compared to the figures for N2. However, the number of first preferences for 2016 from N3 was 54 with 46 from NW11. In 2015 the numbers of first preferences from these two postcodes were also relatively similar. There appears to be a similar level of demand from each of N3 and NW11. In contrast, the two feeder schools in N3 each have five places allocated while the two in NW11 each have 15 places allocated to them. This does not appear to me to be a fair balance that reflects the pattern of parental preference between these two postcodes.
93. I find that the arrangements do contain unfairness to children living in N3 and NW11. I uphold parts of the objection concerning the number of places allocated to particular feeder schools.

Other matters raised in the objections

94. There are a number of other points in the objections which do not fit into the broad headings under which I have considered these objections so far. I will consider these here.
95. There were assertions in the objections that the final choice of feeder schools reflected support given by parents at those schools to the trust in establishing the school and this was contrary to paragraph 1.9e and 1.9i of the Code which say “*admission authorities ... **must not** ... e) give priority to children on the basis of any practical or financial support parents may give to the school ... i) prioritise children on the basis of their own or their parents’ past or current hobbies or activities*”. This assertion is strongly denied by the trust.
96. To my mind there is a difference between the trust’s intention to give priority to children living in a particular geographic area and giving priority to children whose parents supported the establishment of the school. Parents who supported the establishment of the school may benefit from the criterion by having children in the feeder schools, but to do so they

would they would have to be among the five or fifteen applicants living closest to the school. The criterion does not specifically identify parents who supported establishing the school and I do not uphold this part of the objections.

97. Objectors also questioned the clarity of the feeder school criterion regarding how any feeder school places not taken up are allocated and that it was different to the wording in the consultation version. One objector said that the feeder school places were “*ring-fenced*”.
98. The Code does not allow schools, apart from grammar schools, to keep places empty. The school is required to admit all who would like a place if it has the space to do so. If it does not have enough space, it is required to rank applications according to the oversubscription criteria. In the consultation version of the feeder school criterion, the arrangements said that any places not taken up from a feeder school would be offered to applicants on the basis of distance. In the determined arrangements, it clearly says that before offering them to other applicants, they would first be offered to children at the other three feeder schools on the basis of distance. I find this clear and the change between the wording of the consultation version and the determined version is consistent with the aims of the school. I do not uphold this part of the objections.

Summary of Findings

99. The school was established to provide secondary education for children living in three postcodes, N2, N3 and NW11. Since it was established the school has become oversubscribed and with priority for admission being based mainly on how close children live to the school, most children offered places lived in N2 where the school buildings are located. The number of children being offered places who lived in N3 and NW11 has been decreasing to the extent that the trust was concerned that the school was not fulfilling the role they had established it to do.
100. The trust decided to consult on a new set of admission arrangements to ensure that children who lived in N3 and NW11 would continue to be offered places at the school. Any mechanism chosen by the trust to ensure that children from N3 and NW11 would continue to be offered places would lead to fewer places being available to children living in N2 and this would not be perceived as fair by all parents living in that postcode.
101. These objections were submitted by groups of parents and individuals living in N2. Parts of the objections were about the consultation and questioned whether the trust was entitled to determine the arrangements it did on the basis of that consultation. Other parts of the objections concerned the fairness of the determined arrangements to particular groups of children.
102. I am satisfied that it is legitimate for the trust to set admission arrangements that enable the school to fulfil the purpose that it was established for. It is therefore fair and reasonable for the admission

arrangements to ensure that children from N3 and NW11 continue to be offered places at the school. It is, however, impossible for the school to accommodate all of the children who would like to attend it.

103. The trust consulted on allocating a proportion of the places at the school on the basis of attendance at feeder schools distributed across the three postcodes as well as on proximity to the school. That consultation elicited a substantial response and had a high profile in the local community with strong views being expressed both for and against the proposed new oversubscription criteria.
104. After considering the results of the consultation, the trust compiled two alternative options and commissioned an EIA on them together with both the consultation option and the status quo. After considering all of the factors available to them the trust determined the arrangements subject to this determination.
105. This was one of the most comprehensive consultations that I have seen undertaken by a school. For the reasons set out in detail above, I am satisfied that the trust complied with all of the requirements of paragraphs 1.42 to 1.45 of the Code and I do not uphold the objections regarding the consultation.
106. It is possible to follow a line of reasoning from the consultation option through comments received during consultation to the alternative options considered by the trust. I am satisfied that the trust took into account all information available to it before determining the arrangements. The arrangements are therefore reasonable, in the sense of not perverse or irrational, as required by paragraph 14 of the Code. I do not uphold the parts of the objection regarding the determination of the arrangements.
107. A number of mechanisms were available to the trust to give priority for admission to children living in N3 and NW11. For example, after the first four criteria, a proportion of places could be allocated to each postcode and places located within them by ballot or distance from a geographic point. The trust chose to use feeder schools.
108. While the use of feeder schools as an oversubscription criterion is permitted in the Code, the arrangements overall must be fair. I have identified above some groups of children for whom the choice of feeder schools is unfair. I therefore uphold the objections relating to the choice of feeder schools.
109. The Code at paragraph 3.1 allows the adjudicator to set the timescale for admission authorities to comply with a determination. While I consider these arrangements are unfair to some groups of children, they represent an attempt by the admission authority to address unfairness to another group of children. In order to set arrangements which provide a balance between the interests of children living in all three postcodes, the trust will need to consult on a fair mechanism of serving N3 and NW11 as well as N2. I am therefore setting a date of 28 February 2017 for the trust to comply with this determination.

Determination

110. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2017 determined by the Archer Academy Trust for the Archer Academy, Finchley.
111. I have also considered the arrangements in accordance with section 88I(5). I find that there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.
112. 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 within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 28 February 2017.

Dated: 30 September 2016

Signed:

Schools Adjudicator: Phil Whiffing