



## DETERMINATION

**Case reference:** VAR765

**Admission Authority:** Bracknell Forest Council for Ascot Heath Church of England Junior School

**Date of decision:** 10 August 2018

### Determination

**In accordance with section 88E of the School Standards and Framework Act 1998, I do not approve the proposed variation to the admission arrangements determined by Bracknell Forest Council for Ascot Heath Church of England Junior School for September 2019.**

### The referral

1. Bracknell Forest Council (the local authority) has referred a proposal for a variation to the admission arrangements for Ascot Heath Church of England Junior School (the junior school), for September 2019 to the Office of the Schools Adjudicator. The school is a voluntary controlled school for children aged 7 to 11 in Ascot, Berkshire.
2. The proposed variation is stated to be the “*removal of church attendance as a criteria* [sic]”.

### Jurisdiction

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

*“where an admission authority*

*(a) have in accordance with section 88C determined the admission arrangements which are to apply for a particular school year, but*

*(b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined,*

*(2) the authority must except in a case where the authority’s proposed variations fall within any description of variations prescribed for the purposes of this section*

(a) refer their proposed variations to the adjudicator, and

(b) notify the appropriate bodies of the proposed variations...

(5) on a reference under subsection (2) (a), the adjudicator must consider whether the admission arrangements should have effect with the proposed variations until the end of the school year in question.”

4. I am satisfied that the appropriate bodies have been notified and that the governing body have been consulted and that the proposed variation is within my jurisdiction.

### **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 referral form submitted by the local authority dated 21 June 2018 and supporting documents;
- the determined arrangements for 2019;
- a copy of the local authority’s booklet for parents seeking admission to schools in the area in September 2018;
- comments received on the proposed variation from the appropriate bodies; and
- further information provided by the local authority.

### **The proposed variation**

7. The proposed variation is stated to be the “*removal of church attendance as a criteria* [sic]” from the admission arrangements for the junior school. This is a reference to the criterion in the determined admission arrangements for 2019 which reads “*Children...whose parent(s) meet the denominational criterion*”. This criterion appears a number of times in the oversubscription criteria in varying combinations with other criteria.

8. The various criteria interact with each other so that, after looked after and previously looked after children and children who have medical and/or social grounds for admission there are four criteria, as follows:

- a. Children who live in the designated area
- b. Children with a sibling attending the school
- c. Children whose parent(s) meet the denominational criteria; and
- d. Children who have attended the infant school paired with the

junior school

9. The various combinations are set out in the oversubscription criteria with those who meet all of a to d having a higher priority and those who meet a lower number having a lower priority in descending order down to “(R) *all other children*” being those who meet none of a to d.

10. The denominational criterion is set out as follows:

***“Voluntary controlled schools – Denominational Criterion***

*Where denominational grounds are a reason for the application for a voluntary controlled school where the LA is the admission authority (Crowthorne CE School, Warfield CE School and Winkfield CE School and Ascot Heath CE Junior School), it will be necessary for at least one of the parents/carers of the child concerned to regularly attend a church that is part of the group of Churches Together. This group includes the following category of churches - Church of England, all the protestant non-conformist churches (e.g. Baptist, Methodist, United Reform) and Roman Catholic or any other Christian denominational church.*

*At least one of the parents/carers, who live at the same address as the child, must attend worship on at least two occasions in each calendar month for at least 8 months of the year in the 12 months prior to the published closing date for admissions or the date of application if it is an in-year application. Attendance does not include services of marriage, funerals or christenings (except for the christening of the child seeking entrance to the particular school).*

*Applicants will need to complete the relevant form in order to confirm that they are applying to the school on denominational grounds. In addition it will then be necessary for the form to be passed onto their local clergy for verification before it is sent to the School Admissions Team.”*

11. The infant school paired with the junior school is Ascot Heath Infant School (the infant school). Both schools have a published admission number (PAN) of 60.

12. The admission arrangements for 2019, determined by 28 February 2018, were in effect unchanged from previous years, although set out in a different way which the local authority consider to be clearer for parents.

**Consideration of the case**

13. In normal circumstances where changes to admission arrangements are proposed there is a process for consultation and determination (the prescribed process) set out in statute and described in the Code as follows:

*1.42 When changes are proposed to admission arrangements, all*

*admission authorities must consult on their admission arrangements (including any supplementary information form) that will apply for admission applications the following school year. Where the admission arrangements have not changed from the previous year there is no requirement to consult, subject to the requirement that admission authorities must consult on their admission arrangements at least once every 7 years, even if there have been no changes during that period.*

*1.43 For admission arrangements determined in 2015 for entry in September 2016, consultation must be for a minimum of 8 weeks and must be completed by 1 March 2015. For all subsequent years, consultation must last for a minimum of 6 weeks and must take place between 1 October and 31 January in the determination year.*

*1.44 Admission authorities must consult with:*

- 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.*

*1.45 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.*

14. Under the prescribed process a consultation relating to change to the 2019 admission arrangements would have been carried out between 1 October 2017 and 31 January 2018. The responses to the consultation would have been considered and the admission arrangements for 2019 determined by 28 February 2018. The consultation process allows those who are to be consulted on the proposed change to give their views and to have those views taken into account when any decision to change admission arrangements is being made.

## Variations

15. Presumably it was anticipated when the statutory framework was developed that circumstances would arise from time to time which would require changes to admission arrangements within a shorter timescale than that set out in the prescribed process.

16. The relevant provisions are set out in section 88E of the Act (see above). The Code sets out the position as follows:

*“3.6 Once admission arrangements have been determined for a particular school year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of this Code, admissions law, a determination of the Adjudicator or any misprint in the admission arrangements. Admission authorities may propose other variations where they consider such changes to be necessary in view of a major change in circumstances. Such proposals must be referred to the Schools Adjudicator for approval, and the appropriate bodies notified. Where the local authority is the admission authority for a community or voluntary controlled school, it must consult the governing body of the school before making any reference. A variation to increase a school's PAN is not required to be referred to the Schools Adjudicator”.*

17. The Act provides that a referral to the adjudicator may be made where an admission authority *“consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined”*. The Code puts it slightly differently as being where an admission authority *“consider such changes to be necessary in view of a major change in circumstances”*. I do not consider that the difference in wording is material to my consideration of the referral.

## Background

18. The local authority wish to ‘amalgamate’ the junior school with the infant school. The infant school is a community school. The junior school is a voluntary controlled school. The local authority is the admission authority for both schools. The admission arrangements of the infant school are the same or similar to those of the junior school save that for the infant school the oversubscription criteria do not include a denominational criterion (and, obviously, do not include a criterion for attendance at the infant school).

19. There are two ways in which two maintained schools can be ‘amalgamated’. The first is to close both and open a new school and the second is to close either one and enlarge and extend the age range of the other. Either process requires statutory processes beginning with a consultation.

20. The local authority are currently undertaking a consultation on the proposed ‘amalgamation’. This commenced on 5 July (after this referral was made) and ends on 26 September. The proposal is supported by the

governing bodies of both schools and by the Oxford Diocesan Board of Education. The consultation sets out the reasons for the proposal. There are four possible outcomes:

- a. to close both schools and open a new school;
- b. to close the junior school and expand the infant school;
- c. to close the infant school and expand the junior school; or
- d. to keep things as they are.

21. It is not necessary for me to form any view on the merits of the proposed 'amalgamation'.

### **Major change of circumstances**

22. The local authority say in the referral documents that the major change of circumstances is the proposed 'amalgamation' of the two schools. In my view this is not a change of circumstances but rather a decision to consult on a possible future change. However, in the documentation published on the local authority's website it is clear that the local authority's policy is to consider 'amalgamation' of separate infant and junior schools when the opportunity arises. In this case that opportunity has arisen due to the retirement of the headteacher of the infant school with effect from 31 August 2018. It is not stated, but seems likely, that the position regarding the retirement was not definite sufficiently in advance to commence a consultation on admission arrangements within the timeframe required by the prescribed process.

23. The retirement of the headteacher of one school would not in itself lead to any change to the admission arrangements being necessary. Rather, it has given rise to a process that may lead to an outcome which may make a change to the admission arrangements necessary. If there is to be an 'amalgamation' at some future point I accept that it is desirable to proceed without unnecessary delay rather than have lengthy interim arrangements to cover the retirement of the infant school headteacher. For that reason I accept that it is appropriate to commence a consultation on 'amalgamation' at this stage and not to put off plans for an 'amalgamation' in order to allow time for the prescribed process for changes to admission arrangements to be followed.

24. The fact remains that no change of circumstances has yet occurred which makes it necessary to vary the admission arrangements. The need for a variation may arise in future, depending on the outcome of the process for dealing with the 'amalgamation' proposal.

### **The case for a variation**

25. The local authority say that without the proposed variation the admission arrangements will be different for the two schools. Clearly this is correct. They say that parents will begin the process of applying for entry to

both schools in September 2019 in September 2018. This is also correct, although the deadline for applications is 15 January 2019.

26. The local authority says that they need to publish the arrangements parents will be applying under, and that as the admission arrangements are different for the two schools *“then parents applying for a place at the school could be disadvantaged if they [the oversubscription criteria] were not the same if they [the two schools] were to become a primary school during the application process”*.

27. The local authority is required to publish its composite prospectus for 2019 admissions for all schools in its area by 8 September 2018, before the end of the consultation period. At that point no decision will have been made on the ‘amalgamation’. It will therefore presumably publish the admission arrangements for the infant school and for the junior school (whether varied or not) as two separate schools.

28. I note here that the consultation documents on the ‘amalgamation’ proposals refer, in the FAQ section, to admissions. The relevant section reads as follows:

*“Would school admission be any different depending on which option is chosen?”*

*When setting admission arrangements the local authority set the admission criteria for both Community and VC schools. These are broadly similar, except that Ascot Heath Junior School has church attendance (the ‘denominational criterion’) as one of their criteria for admission. The Governing Body of Ascot Heath Junior School has requested that the local authority seek to remove the denominational criterion for 2019/20, and later years, in line with Diocesan guidance. This will mean that both Infant and Junior schools will have the same criteria for applications, including designated area and sibling. This will facilitate any amalgamation and mean that school admissions will be same whichever option is chosen.”*

29. I have not been given any indication of a preferred process for ‘amalgamation’. The consultation documents do not suggest any preference for one of a to c over another. The proposed ‘amalgamation’ is at the initial consultation stage. If it is to progress the responses to the consultation will need to be conscientiously considered and, if a decision is taken to proceed, statutory notices will have to be published and again any responses taken into account before a final decision is made. A decision may be made to ‘amalgamate’ under option a, b, c, not to ‘amalgamate’ at all.

30. It is clear that the local authority, the governing bodies of both schools and the diocese all agree to the removal of denominational criteria. However what changes to the admission arrangements for an ‘amalgamated’ school may be necessary, will depend on which process for ‘amalgamation’ is followed. For example, if the decision is to close both schools and establish a new school the statutory processes will need to set out how children will transfer from the roll of the closing schools to the new one and set admission

arrangements for the Reception year in the new school. In this case no variation would be required to the junior school arrangements. If other options were chosen, then depending on the detail of the final decision, a variation may, or may not, be required.

31. If there is no 'amalgamation' the admission arrangements for 2019 would remain as determined for each school unless varied. I note that the local authority, the governing bodies of both schools and the diocese all agree that they would not wish to maintain the denominational criterion for the junior school in any event. However, had the change to admission arrangements to exclude the denominational criterion been considered necessary without the prospect of 'amalgamation', a consultation could have been undertaken following the usual process, for 2019 or any preceding years.

32. If there is no 'amalgamation' then the effect of the variation would be to change the oversubscription criteria for the junior school. The junior school was oversubscribed for entry in 2017 and 2018. In each of those years all 60 places were allocated in the initial round of allocations in March. In 2017 the last place was allocated to a child within the designated area who met none of the other criteria. In total 5 pupils were admitted in part due to meeting the denominational criterion. In 2018 the last place was allocated to a child living outside the designated area, who did not fall under the denominational criterion and with a sibling in the junior school. In total one pupil was admitted in part due to meeting the denominational criterion. Four children were on the waiting list for the junior school at the time of allocation in March 2018. Since then all of these children have been offered a place and there are currently vacancies for Year 3.

33. I conclude that in 2017 and 2018 the denominational criterion has had little or no effect on admissions to the junior school. However the number of preferences for the junior school may rise and the denominational criterion may play a more decisive role in the oversubscription criteria in future. As no consultation has been carried out on removing the denominational criterion it is impossible to say whether parents, carers or other interested parties may have a view. Some parents may consider that the likelihood of gaining a place in future would be diminished by its removal. Some people may wish to oppose removal the denominational criterion on principle, regardless of its effect on who is ultimately admitted to the school. The prescribed process has not been followed and so no opportunity to express a view has been afforded to those who may wish to do so. To determine that the proposed variation should take effect would be to deny those who would have been consulted an opportunity to comment and would remove from the decision making process consideration of any comments that may have been made.

34. The proposed 'amalgamation' is still at an early, formative stage. In my view it would be premature to base a determination of this referral on possible outcomes of that process. Were it not for the proposed 'amalgamation' I see no reason why the admission arrangements as determined for the infant school and the junior school should not continue for a further year, allowing the prescribed process for changing them to be followed giving parents and



others the opportunity to comment on any proposed change.

35. Following due process it may be decided that 'amalgamation' in some form is to take place. If so, and if the local authority considers that that constitutes a major change of circumstances, and in view of that major change of circumstances considers that the arrangements should be varied, then any proposed variations can be referred to the adjudicator at that time.

### **Summary**

36. Due to the prospective retirement of the headteacher of the infant school the local authority have commenced a consultation on 'amalgamation' of the two schools.

37. The outcome of the proposals for 'amalgamation' are unknown at this stage. If the outcome is no 'amalgamation' then the denominational criterion will have been removed from the junior school's oversubscription criteria without the prescribed process being followed. Those who may have wished to comment, and to have their views taken into account will have been denied that opportunity.

37. On balance I find that it would be premature to agree to the proposed variation. The local authority will have the opportunity to apply for a variation, if considered necessary, after a decision on 'amalgamation' is made. The local authority can, if it wishes, forewarn parents in the composite prospectus of the effects of possible future decisions on 'amalgamation', and the governing bodies of the schools can do so in the prospectus for each school.

### **Determination**

38. In accordance with section 88E of the School Standards and Framework Act 1998, I do not approve the proposed variation to the admission arrangements determined by Bracknell Forest Council for Ascot Heath Church of England Junior School for September 2019.

Dated: 10 August 2018

Signed:

Schools Adjudicator: Tom Brooke