



Office of
the Schools
Adjudicator

Determination

Case reference: VAR2206

Admission authority: the governing board for All Saints Benhilton Church of England Primary School, Sutton, Surrey

Date of decision: 4 January 2022

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by the governing board for All Saints Benhilton Church of England Primary School in the local authority area of Sutton Council for September 2022.

I determine that for admission in September 2022 the faith-based oversubscription criteria will be as described in this determination.

I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with 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.

The referral

1. The governing board for All Saints Benhilton Church of England Primary School (the school) has referred a proposal for a variation to the admission arrangements for September 2022 (the arrangements) to the adjudicator. The school is a voluntary aided school for children aged three to eleven in the London Borough of Sutton (the local authority). The school has a Church of England religious character and its faith body is the Diocese of Southwark (the faith body). The proposed variation makes changes to the faith-based oversubscription criteria and is made in the light of the Covid-19 pandemic.

Jurisdiction and procedure

2. The referral was made to me in accordance with section 88E of the School Standards and Framework Act 1998 (the Act) which deals with variations to determined arrangements. Paragraphs 3.6 and 3.7 of the School Admissions Code (the Code) say (in so far as relevant here):

“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.

3.7 Admission authorities **must** notify the appropriate bodies of all variations”.

3. I have been provided with confirmation that the appropriate bodies have been notified. I find that the appropriate procedures were followed, and I am also satisfied that the proposed variation is within my jurisdiction. I am also satisfied that it is within my jurisdiction to consider the determined arrangements in accordance with my power under section 88I of the Act as they have come to my attention and determine whether or not they conform with the requirements relating to admissions and if not in what ways they do not so conform.

4. In considering these matters I have had regard to all relevant legislation, and the Code.

5. The information I have considered in reaching my decision includes:

- a. the referral from governing board received 1 November 2021 and provided by the faith body with the authority of the governing board, supporting documents, responses to my enquiries and further information provided at my request;
- b. the determined arrangements for 2022 and the proposed variation to those arrangements; and
- c. the guidance provided on admissions by the faith body called “Admission and Appeals in Church of England Schools: Guidelines for Governing Bodies” (the faith body’s guidance).

Background

6. The faith body provided the request for the variation to me on behalf of the governing board. All information and requests for information have been shared with the governing board

but the faith body has responded to any questions regarding the arrangements on behalf of the governing board.

7. The published admission number (PAN) for the school is 60. Of these places, the arrangements provide that up to 42 are designated 'foundation places' and priority for these is faith based and the remaining up to 18 places are 'open places' using no faith based criteria. The oversubscription criteria are summarised below. They are arranged in four groups:

A Foundation places: for children "whose parent(s) are faithful and regular worshippers in an Anglican or other recognised Christian Church...Faithful and regular worshippers will be taken to mean attendance for a minimum of two years at the time of application, at least fortnightly and show a demonstrated commitment to the life of the church as shown in Section 2 of the supplementary form [which relates to baptism of the parent(s), church membership, confirmation of parent(s) (for Anglicans only) and baptism, dedication or blessing of the child]". Priority for these places is given in the following order

- 1) looked after and previously looked after children
- 2) child with a sibling at the school admitted to a foundation place
- 3) child whose parent(s) are faithful worshippers at All Saints Benhilton Church
- 4) child whose parent(s) meet the commitment at an Anglican church
- 5) child whose parent(s) have "applied for places and demonstrated a Christian Church commitment as defined above".

B Open places

- 1) looked after and previously looked after children
- 2) child with a sibling at the school admitted under an open place
- 3) other children

C Governors places:

Ci foundation places: children with exceptional medical or social needs which indicate a requirement to attend the school and meet the faith based criteria. If a child is admitted under this priority, then the number of foundation places is reduced accordingly.

Cii open places: children with exceptional medical or social needs which indicate a requirement to attend the school. If a child is admitted under this priority, then the number of open places is reduced accordingly.

8. Where there is oversubscription within any category then priority is given to the child living closest to the school in a straight-line. The arrangements also explain "In the event of

Foundation places being under subscribed, then the unfilled places will become additional Open places and any unfilled Open places will become Foundation places.”

9. As the school has a religious character it is entitled to use faith based criteria. In order to assess applicants against these criteria the school requires certain information about the religious affiliation and practice of applicants. Paragraph 2.4 of the Code says that “In some cases, admission authorities will need to ask for supplementary information forms in order to process applications” and so permits admission authorities to request additional information, beyond that provided via the local authority’s common application form (CAF) which all applicants for places will complete. If an admission authority chooses to use such a supplementary information form (SIF) to request this additional information, then paragraph 2.4 of the Code says that the admission authority “**must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria”.

10. The faith body provided me with a document with the electronic name, “All Saints Benhilton church ref form 2022-23”. The form itself has the title, “Foundation Place Support for admission September 2022.” This form, which I will refer to as the foundation place form, asks for information so the admission authority can apply its foundation place criteria. The foundation place form is not available on the school’s website.

11. The school’s website provides a form called “Supplementary Expression of Interest” form which I will refer to as the expression of interest form. The expression of interest form provides a considerable amount of information on the admission arrangements for the school and asks questions, beyond ones for identification purposes, such as “Is there any existing connection to All Saints Benhilton Primary School” and “Has your child any special educational needs, if so please give details.” It is possible that the expression of interest form is intended to serve several purposes as it asks if a place is sought at the nursery and it appears also to be intended as a means for those seeking a place at the school other than at the normal point of entry to make their application.

12. The arrangements say, “If the application is to be considered under Foundation criteria, then both our Supplementary Expression of Interest form [what I am terming the expression of interest form] and a Foundation Place Support form [what I am terming the foundation place form] will need to be completed.”

The proposed variation

13. Where the school is oversubscribed priority may be given on the basis of faith. The school’s arrangements take account of attendance at places of worship. During the Covid-19 pandemic places of public worship have at some times been closed altogether and at other times not available for public worship or access to such worship has been restricted in the interests of public health. It is against that background that the request for a variation is made. Since the school’s oversubscription criteria include attendance at public worship of a specified frequency over a specified period of time, parents and their children are unable to meet this criterion under the terms of the school’s current admissions arrangements. In consequence the

proposed variation provides that attendance at church will only have been required at times when places of public worship are open for such public worship.

14. The oversubscription criteria in the admission arrangements include priorities for those who regularly attend worship at a Christian church which I shall refer to as the foundation places. Paragraph 3.6 of the Code (as above) requires that admission arrangements, once determined, may only be revised, that is changed or varied, if there is a major change of circumstance or certain other limited and specified circumstances. I will consider below whether the variation requested is justified by the change in circumstances.

Consideration of proposed variation

15. The proposed variation is that where relevant the arrangements are modified with the addition of the following statement: “In the event that during the period specified for attendance at worship the church has been closed for public worship and has not provided alternative premises for that worship, the requirements of these admissions arrangements in relation to attendance will only apply to the period when the church or alternative premises have been available for public worship.”

16. It is beyond question that the Covid-19 pandemic represents a major change of circumstances. I am satisfied that the proposed variation is a pragmatic and appropriate response. I approve the variation as described above.

Consideration of the arrangements

17. Having considered the arrangements as a whole it appeared to me that a number of the provisions in the arrangements may not conform with requirements of the Code and so I brought them to the attention of the governing board and the faith body. I set out my findings below.

18. The arrangements often use the terminology ‘parent(s)/carer(s)’, as in ‘parent(s) who are faithful worshippers’. This makes it unclear whether it is necessary for one or two parents to meet the faith based criteria. Paragraph 14 of the Code 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. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated. Paragraph 1.8 of the Code requires that oversubscription criteria **must** be clear and paragraph 1.37 of the Code says that “Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.” Because the arrangements are not clear in this matter, they do not meet these requirements.

19. The arrangements say that the foundation places are, “to be offered to pupils whose parent(s) are faithful and regular worshippers in an Anglican or other recognised Christian Church (recognised by Churches Together in Britain and Ireland and The Evangelical Alliance). Regular, faithful worshippers will be taken to mean attendance for a minimum of two years at the time of application, at least fortnightly and show a demonstrated commitment to the life of the

church as shown in Section 2 of [the foundation place form].” Section 2 in the foundation place form is headed “Commitment to the life of the church” and has four questions which are asked both of the mother and the father of the child. These concern:

- 1) baptism of the parent;
- 2) membership of the church of the parent;
- 3) whether the parent is a confirmed Anglican; and
- 4) the baptism, dedication or blessing of the child.

20. First, it is not clear how many of the four have to be met to meet the requirement for commitment. In addition, it is not clear whether one or both parents must fulfil the commitment required. Furthermore, there is no definition of “membership of the church”. It would be hard for parents to know if the requirements would be considered to be met or not. The arrangements are not clear in all these matters and so do not comply with the requirements of paragraphs 14, 1.8 and 1.37 as set out above.

21. The foundation place form is not available on the school’s website. As the form is used by the governing board to apply the admission arrangements, the foundation place form must be published on the school’s website as required by paragraph 1.50 of the Code which deals with publication of arrangements. The purpose of the foundation place form is to allow those who believe that they may meet the criteria for foundation places, to provide information and evidence to support this. However, not only is the foundation place form not available on the school’s website, but it also requires information not necessary to apply the school admission arrangements. Paragraph 2.4, as described above, says that admission authorities may only “request additional information when it has a direct bearing on decisions about oversubscription criteria”. The foundation place form goes beyond this by asking for the gender of the child. This is not necessary to apply the admission arrangements. The form also refers to “member(s)” of a church and provides opportunities to write “I” or “We”. For example, one section of the form says, “I/We confirm that we are regular attendees at church for a minimum of fortnightly and for at least two years.” Again, It is therefore unclear whether it is necessary for one or both parents to meet the faith criteria and this makes the arrangements unclear.

22. I further note that the foundation place form asks that the “Priests, Ministers and Church Leaders” tick a box to “confirm the family’s attendance and commitment to the life of the Church.” Again, it is unclear who is included here, because of the use of the word ‘family’, whether it is one or two parents or including a child or children. The form also provides a box to be ticked for, “I fully support this application and consider it meets Foundation criteria in the admissions policy.” It is not clear to me on what basis ‘full support’ is given (or not) here. The wording could imply that other matters are taken into consideration than those listed in the oversubscription criteria. This makes the arrangements unclear and in breach of paragraph 2.4 as described above.

23. I turn now to the second form, that is the expression of interest form (described above). It is not clear to me what part this form is meant to play in admissions at the normal point of entry

to the school. It is available on the school's website and the policy states that it is necessary to complete this form in order to apply for a place at the school. However, I cannot see how and why this is the case. In the normal admission round, applications for places are made via the CAF of the local authority in whose area each applicant lives. Other forms may only be used, as paragraph 2.4 of the Code makes clear, where they ask for information not available on the CAF and necessary to apply the oversubscription criteria. The expression of interest form does not ask for any information which is not on the CAF and which is necessary to apply the oversubscription criteria. By requiring applicants to complete the expression of interest form, the arrangements are in breach of the Code. Moreover, the expression of interest form asks for information which is both not necessary to apply the oversubscription criteria and which is also specifically prohibited from being asked by paragraph 2.4, namely information about any special educational needs of a child. This is a further breach of paragraph 2.4.

24. Paragraph 1.38 of the Code says, "Admission authorities for schools designated as having a religious character **must** have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith-based admission arrangements, to the extent that the guidance complies with the mandatory provisions and guidelines of this Code." I emphasise here that the governing board is not compelled to follow the guidance from its faith body; it may depart from that guidance provided that, having had regard to the guidance, it has a clear and proper reason for departing from it. The faith body guidance says that where arrangements refer to membership of church groups, such as Churches Together in England, the Evangelical Alliance, Affinity or the Fellowship of Independent Evangelical Churches that "The terminology used in policies must also refer exclusively to 'membership', [and] not [to] being 'recognised' or 'associated' with a church as these organisations offer no such options." However, the oversubscription criteria for foundation places in the arrangements refer to Christian churches "recognised by Churches Together in Britain and Ireland and The Evangelical Alliance." In addition, the faith body guidance advises against "using membership of Churches Together in Britain and Ireland" in oversubscription criteria. It therefore appears that the arrangements are not in line with the faith body guidance and I brought this to the attention of the governing board. The governing board has given me no rationale for its departure from the faith guidance and no evidence that it has had regard to the guidance. In these circumstances I find that the governing board has failed to comply with paragraph 1.38 of the Code. I also find that the arrangements are unclear in this regard for the reasons given in the faith body guidance, as above, which explains that referring to Christian churches as being recognised by the bodies listed has no meaning. The arrangements therefore do not comply with paragraphs 1.37 and 1.38 of the Code.

25. The foundation place form refers to membership "of local Churches Together Group, Churches Together in Britain and Ireland, The Evangelical Alliance or The African and Caribbean Evangelical Alliance" which is not consistent with other parts of the arrangements. This inconsistency makes the arrangements unclear and thus not compliant with paragraphs 1.37 and 1.38 of the Code.

26. I turn now to the effect of the governors places. The school's PAN is 60 and the oversubscription criteria have four categories: (A) foundation places (up to 42 places), (B) open places (up to 18 places), and governors places both for foundation places (C) and open places (D). Clearly, category A and B together would sum to the PAN of 60 places. The arrangements also state that any places offered under the governors places will reduce the number of places available in the foundation and open places accordingly. It is not clear, however, where there are more applications than places, what degree of priority is to be given to those meeting the criteria for governors places. For example, if a child met the criteria for a governors place under the open criteria, would that child have a higher or a lower priority than another child with a sibling already at the school? The reference to reducing the number of places available for other children suggests that governors places take a high priority and that such a child would be admitted before any other child is considered. If this is indeed the meaning, then this would breach paragraph 1.7 of the Code which requires that looked after and previously looked after children must always have the highest priority. The meaning is not clear and so the arrangements do not comply with paragraphs 1.4 and 1.8 of the Code.

27. The arrangements provide that where not all children falling within an oversubscription category can be admitted, "places will be allocated to those children living closer to the school measured in a straight line from the home address to the front door of the school". Paragraph 1.13 of the Code says, "Admission authorities **must** clearly set out how distance from home to the school and/or any nodal points used in the arrangements will be measured. This **must** include making clear how the 'home' address will be determined and the point(s) in the school or nodal points from which all distances will be measured. This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent." There is no provision in the arrangements for where parents have separated and the child lives part of the time with one parent and part with the other and so the arrangements do not comply with paragraph 1.13 of the Code.

28. Paragraph 2.17 of the Code sets out requirements concerning part-time attendance and deferred admission where a child has not reached compulsory school age. The arrangements reflect the Code accurately in one place but in another (under 'Guidance Notes') present parental rights as the ability to request part-time education. This is not an accurate reflection of the right to have part-time education before a child reaches compulsory school age. This makes the arrangements unclear and not compliant with the Code.

29. Paragraph 2.15 of the Code says, "Each admission authority **must** maintain a clear, fair, and objective waiting list until at least 31 December of each school year of admission." The arrangements say that the waiting list will be maintained until the last day of the autumn term which is highly unlikely to be 31 December. This means that the requirements of paragraph 2.15 are not met.

30. The faith body has told me that the governing board will address these matters and that the governing board will work with the faith board to do so. This is welcomed. The faith body has said that the governing board has also commenced consultation on its arrangements for 2023.

As the governing board has accepted that changes are required, I will not discuss them further other than to make clear that the Code requires that the arrangements for 2022 be amended to address the points set out here.

Determination

31. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by the governing board for All Saints Benhilton Church of England Primary School in the local authority area of Sutton Council for September 2022.

32. I determine that for admission in September 2022 the faith-based oversubscription criteria will be as described in this determination.

33. I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the ways set out in this determination.

34. 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.

Dated: 4 January 2022

Signed:

Schools adjudicator: Deborah Pritchard