



Office of
the Schools
Adjudicator

Determination

Case reference: VAR2349 (for 2023) and VAR2350 (for 2024)

Admission authority: The Governing Board of St Mary and St John Church of England Primary School, Oxford

Date of decision: 4 September 2023

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I approve with modification the proposed variation to the admission arrangements determined by the governing board for St Mary and St John Church of England Primary School, Oxford for September 2023.

I determine that, for the arrangements for September 2023, the arrangements shall be varied by the replacement of the sentence:

“The measurement will be taken to the school site (main gate of either Comper Foundation School or Meadow Lane [the main school site]) nearest to the child’s home address”

by the sentence:

“The measurement will be taken to the main gate of the school on Meadow Lane”

where the former appears in the arrangements.

I also approve the proposed variation to the admission arrangements for September 2024. I determine that, for the arrangements for September 2024, the arrangements shall be varied by the addition of the sentence:

“The measurement will be taken to the main gate of the school on Meadow Lane”

at the place in the arrangements described in this determination.

The referral

1. The board of governors of St Mary and St John Church of England Primary School (the school) has referred a proposal for a variation to the admission arrangements for September 2023 and September 2024 for the school to the Office of the Schools Adjudicator. The school is a voluntary aided school for children aged 3 to 11 in the city of Oxford and the local authority is Oxfordshire County Council.
2. In both sets of arrangements, a statement is made that if oversubscription occurs within any of the stated oversubscription criteria, children living nearest to the school will be given priority. The measurement of distance is described in a footnote.
3. The proposed variation is that the arrangements for both years be varied to no longer determine the distance from a child's home to the nearer of the two sites on which the school has previously been operating, but to measure only to the main site of the school.

Jurisdiction

4. 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, 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. I am satisfied that the proposed variation is within my jurisdiction.

Procedure

6. In considering this matter I have had regard to all relevant legislation, and the School Admissions Code (the Code).
7. The documents I have considered in reaching my decision include:
 - a. the referral from the board of governors dated 15 June 2023, supporting documents and subsequent correspondence;
 - b. the determined arrangements for both 2023 and 2024 and the proposed variation to those arrangements;
 - c. a map showing the location of the school and other relevant schools;

- d. a copy of the letter notifying the appropriate bodies about the proposed variation;
and
- e. comments received on the proposed variation from the appropriate bodies.

The proposed variation

8. Paragraph 3.6 of the Code requires that admission arrangements, once determined, may only be changed, that is 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.

9. When the school submitted the request on behalf of the board of governors, it did not provide the following information necessary for me to consider it:

- a. A copy of the admission arrangements for 2024, only those for 2023 having been enclosed with the request;
- b. The minutes of the meetings at which both the 2023 and 2024 arrangements were determined, and
- c. Evidence of a notification of the proposed variation to all of the appropriate bodies, or of any responses received from them

10. I therefore requested this information from the school, together with further information concerning the change in circumstances which made the requested variation necessary. The form submitted by the school had referred to “the Comper Foundation Stage School Building” (the Comper Building), at which the school’s reception classes have previously been taught but did not explain what this was or whether it was to remain in use by the school. I will explain why this is relevant below.

11. The school provided me with a copy of the arrangements for 2024 and evidence that these had been determined on 6 February 2023, and that those for 2023 had been determined on 3 February 2022. It told me (on 28 June 2023) that the proposed variation had been notified to the local authority and to the Oxford Diocesan Board of Education (the ODBE), but that no responses had been received from them. It also told me that the “Comper Foundation Stage building will not remain in use by the school after July 2023”.

The notification of relevant bodies and their responses

12. I explained to the school that in addition to the local authority and the school’s faith body, the Regulations which are referred to in paragraph 3.7 of the Code specify (via the footnote given there) that all other admission authorities for primary schools and the governing boards of all community and voluntary controlled schools in the area must also be notified (as also stated in the form provided for variation requests to be made to the

adjudicator). I explained that it was not possible for me to progress the requested variation until I had been provided with evidence that this notification had taken place.

13. The school sent me a copy of emails sent by it on 24 July 2023 to the ODBE, and evidence that the LA was aware of the request as a result of its involvement with the premises at the Comper Building (as I shall explain below). Both these bodies had also received a copy of the variation request as a matter of courtesy from the adjudicator, and the ODBE wrote to the adjudicator on 18 July 2023 expressing its support and also helpfully explaining that:

“The school has been left in a very difficult position as the Reception Year was taught on another site under the supervision of another school under a partnership agreement and unfortunately, the other school were unable to fulfil the contract (nor give the required notice) so we have had to organise emergency building work at the main site to accommodate these two classes. The reception year is full from the main admissions round so any changes for the 23/24 year would only apply to in-year admissions. All children at this school will only ever be attending the single site from September 2023.”

14. The LA wrote to the adjudicator on 27 July 2023 expressing its support for the requested variation.

15. The school also sent me evidence that it had notified the relevant admission authorities for schools in the area of the requested variations on 24 July 2023. It informed me on 30 August 2023 that there had been no responses from any of these bodies.

16. I am satisfied that all relevant bodies have been notified and that views expressed have been taken into consideration. I find that the appropriate procedures were followed.

The change in circumstances

17. When I informed the school of the requirements concerning the notification of relevant bodies, I also explained that the relevance of its discontinued use of the Comper Building was that The School Organisation (Prescribed Alteration to Maintained Schools)(England) Regulations 2013 (at paragraph 15 of Schedule 2) require proposals to be published for the “discontinuation of provision at any site of a school which occupies more than one site”. However, this is required only if the site is one mile or more from the site which remains in use. Since the Comper Building site is only 0.5 mile from the main site of the school, this was not a requirement, and I informed the school of this. I also asked for further information as to the future use of the site as background to my consideration of its request.

18. Some of this background was provided by the ODBE (above), but the school has since sent me:

- a. a copy of letters sent out in May 2023 to relevant parents explaining the background to the changed use of premises;
- b. a copy of an underlease between Oxfordshire County Council for premises forming part of the Comper Building and surrounding play area to the Parochial Church Council of St Mary and St John, the Diocesan Trustees and the governing board of the school, dated 12 April 2006; and
- c. notification of the termination of this underlease with effect from 1 September 2023 on behalf of the tenants to the LA from the ODBE.

19. Taken together, this documentation makes it clear that “a unique arrangement” began a number of years ago under which the two Reception classes of the school have occupied part of the premises known as the Comper building, which also houses a local authority Nursery school (Comper Foundation Stage School). The entire provision has been managed by the Headteacher of the Nursery School overseen by the governing boards of both schools. The parties have decided to terminate this arrangement with effect from September 2023. The LA retains a long-term lease of the Comper Building and is planning to use the space released to implement new provision no later than April 2024 to take advantage of new funding for the Early Years which has been announced recently.

The requested variations

a. The 2023 arrangements

20. The email sent by the school on 15 June 2023 provided the requested variation to the 2023 arrangements, which were attached, together with the request form. The arrangements contain a footnote describing the measurement of home-to-school distance which says:

“The straight line distance used to determine proximity of the home to the school will be measured by OCC LA’s Geographical Information System. The measurement will be taken to the school site (main gate of either Comper Foundation School or Meadow Lane [the main school site]) nearest to the child’s home address. The starting point of the measurement will be the geographical placement of the address (address point using the Easting/Northing British Co-ordinate system).....The end point of the measurement will be determined by the Admissions Authority of the OAA [own admission authority] school and provided to the LA....”

21. The covering email requested that the sentence which I have underlined in the above statement be removed, and nothing more. I was concerned that the arrangements would as a result specify no end point for the measurement of distances, and since this was the purpose of the requested variation and since without such information the arrangements would in my view be unclear and fail to comply with paragraph 1.13 of the Code which requires the point at the school to which distances are measured to be specified, I sought the views of the school to my suggestion that the requested variation be modified (by me)

so that the deleted sentence is replaced by “The measurement will be taken to the main gate of the school on Meadow Lane.” When the school responded, it did not provide any comment on my proposed amendment to the requested variation, but instead sent me a copy of what it referred to as an “updated” version of the arrangements (edited by the Headteacher) which contained it. I asked the school to confirm that since I understood this to mean that the admission authority for the school had not redetermined the arrangements, the document could be taken by me as the Headteacher’s view on behalf of the admission authority that the proposed amendment meets with their approval. The school has confirmed that this is the case.

b. The 2024 arrangements

22. The variation request form sent by the school had said the variation to its admission arrangements to measure distances only to the main site of the school “will apply for 2023 and 2024 admissions”. When I saw the copy of the 2024 arrangements which was sent to me at my request, this contained a footnote describing the measurement of home-to-school distances which said, only:

“The straight-line distance used to determine proximity of the home to the school will be measured by OCC LA’s Geographical Information System.”

23. In other words, it was not clear to me what variation to the arrangements was being requested, since it seemed that the determined arrangements did not contain the wording which it had been requested should be deleted in the case of the 2023 arrangements. I therefore asked the school to confirm that what it had sent me was the 2024 arrangements as they had been determined by the governing board on 6 February 2023 (evidence for which it had previously provided), and to clarify the requested variation. The school did not provide confirmation that the version of the arrangements in front of me was as determined on 6 February 2023, but sent me a copy of the Headteacher’s “amended wording” which it was said reflected “the same changes” (as for the 2023 arrangements). I therefore contacted the school and explained that it was essential for the adjudicator to have categorical knowledge of the matters he was being requested to approve. The school then confirmed that the arrangements I had seen were those for which I had seen evidence of determination.

24. I had said to the school that if this was the case, I would treat the “amended wording” sent to me as the requested variation. The change which had been made to the arrangements as determined on 6 February 2023 was the addition of the sentence “The measurement will be taken to the main gate of the school on Meadow Lane”, not in the footnote but in the wording which follows the stated oversubscription criteria, such that these will read:

“Proximity of the child’s home, as measured by the straight-line distancebetween the home and the school with those living nearer being accorded the higher priority...will serve to differentiate between children in criteria 1-6 should the need

arise. The measurement will be taken to the main gate of the school on Meadow Lane.....”

25. This has the same effect as the variation requested for the 2023 arrangements, and I am content that the 2024 arrangements, varied as proposed, do not fail to comply with what paragraph 1.13 of the Code requires as the arrangements describe elsewhere how the home address of a child will be determined. Paragraph 1.13 requires that this be present in arrangements, together with a statement of the point in the school to which distance is measured.

26. Since it is clear to me as to the variation which has been requested concerning the 2023 arrangements and the admission authority’s view of the amendment to that variation which I have proposed, and as to the requested variation concerning the 2024 arrangements which has been made, I will now turn to a consideration of those variations.

Consideration of proposed variations

27. The arrangements for both years give priority (following that given to looked after and previously looked after children and to those with exceptional medical or social needs) to children living in the school’s defined catchment area (with higher priority to those with a sibling already at the school) followed by those living outside the catchment area (with higher priority to those with a sibling already at the school).

28. The school helpfully told me in its original request form that while the requested variation was necessary (since using the proximity of a child’s home to part of the school premises that it would no longer occupy would be “anomalous”), it anticipated no detriment to those living within its defined catchment area, since it has been able to admit from outside this area an average of 19 children in the last four years, and expected to be able to offer places to all in-catchment area families wherever they lived in the catchment area for the foreseeable future.

29. The variation is clearly a necessary response to the school’s change in circumstances and the desire of the school to simply base distance measurements on the distance of a child’s home to what will now be the only site on which the school operates is obviously appropriate. There is no likely impact on other schools or on parents living in the school’s catchment area who might reasonably hope to secure a place there.

30. Section 88E(6)(b) of the Act allows the adjudicator to modify variation proposals. I have explained the reason for me suggesting to the admission authority that the sentence:

“The measurement will be taken to the main gate of the school on Meadow Lane”

be added to the variation requested for the arrangements for 2023, and that this has met with its approval.

Summary

31. I have explained why the requested variation to the school's admission arrangements for 2023, modified as described above, is an appropriate response to the school's change in circumstances.

32. I have also explained that the variation requested for the school's arrangements for 2024 is the addition to those arrangements of the same sentence as the modification agreed to the arrangements for 2023, and for the same reasons I consider this to be an appropriate response to the school's change in circumstances.

Determination

33. In accordance with section 88E of the School Standards and Framework Act 1998, I approve with modification the proposed variation to the admission arrangements determined by the governing board for St Mary and St John Church of England Primary School, Oxford for September 2023.

34. I determine that, for the arrangements for September 2023, the arrangements shall be varied by the replacement of the sentence

“The measurement will be taken to the school site (main gate of either Comper Foundation School or Meadow Lane [the main school site]) nearest to the child's home address”

by the sentence:

“The measurement will be taken to the main gate of the school on Meadow Lane”

where the former appears in the arrangements.

35. I also approve the proposed variation to the admission arrangements for September 2024. I determine that, for the arrangements for September 2024, the arrangements shall be varied by the addition of the sentence:

“The measurement will be taken to the main gate of the school on Meadow Lane”

at the place in the arrangements described in this determination.

Dated: 4 September 2023

Signed:

Schools Adjudicator: Dr Bryan Slater