



Additional Support Needs

DECISION OF THE TRIBUNAL

Reference

1. By application dated February 2019 the appellant lodged a reference under section 18(1) and 18(3)(da) of the Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”) against a decision of the respondent.
2. The reference is in respect of the decision dated 3 December 2018 whereby the respondent refused a placing request made by the appellant under paragraph 1 of Schedule 2 of the 2004 Act for his son (“the child”) to attend an independent special school, the specified school.

Decision

3. The tribunal overturns the decision of the authority and requires the authority to place the child in the school specified in the placing request to which the decision relates (the specified school), with effect from the start of the school term commencing in January 2021 in terms of section 19 (4A)(b)(i) of the Act.
4. The decision of the tribunal is unanimous.

Process

5. The bundle consists of pages T1-T69, A1-A162 and pages R1-R461. A joint statement of agreed facts was entered into by the parties, the final version of which is at pages T61-T67. In addition, both parties prepared outline written submissions which were then supplemented orally after the conclusion of the evidence. The appellant’s submissions

are at A151-162. The respondent's submissions are at R461. We took into account all of the information in reaching our decision.

6. This case originally called for an in person hearing in September 2019. However, the hearing was adjourned for additional information to be produced. Following the adjournment there were a number of case management conference calls and an oral in person hearing was assigned for 28- 30 April 2020. Due to the Covid 19 outbreak and following the Chamber President's guidance notes (PGN 1 and PGN 2 of 2020) the hearing was discharged.
7. A case management conference call was held on 23 June 2020 and new hearing dates fixed. The hearing proceeded remotely by way of video conferencing due to the ongoing Covid 19 pandemic and social distancing restrictions which prevented in person hearings at the relevant time. Oral evidence was heard over two days, with oral submissions on day three.
8. Although the respondent led at the hearing, there was one witness cited by the tribunal and her evidence was heard first, followed by the witnesses for the respondent and then the witnesses for the appellant. Evidence was heard from:
9. Witness A. A statement of the witness is included at A39-43. The witness gave evidence in support of the statement and was asked questions by the solicitors acting for each party, and by the tribunal members.
10. Witness B. An updated statement of the witness is included at R425-429. The witness gave evidence in support of the statement and was asked questions by the solicitors acting for each party, and by the tribunal members.
11. Witness C. A statement of the witness is included at R401-409. The witness gave evidence in support of the statement and was asked questions by the solicitors acting for each party, and by the tribunal members.
12. Witness D. An updated statement of the witness is included at R410-424. The witness also spoke to an options appraisal document prepared by her and found at R27-40. The

witness gave evidence in support of the statement and options appraisal document and was asked questions by the solicitors acting for each party, and by the tribunal members.

13. Witness E. A statement of the witness is included at A122-123. The witness gave evidence in support of the statement and was asked questions by the solicitors acting for each party, and by the tribunal members.
14. Witness F. A statement of the witness is included at A118-121. The witness gave evidence in support of the statement and was asked questions by the solicitors acting for each party, and by the tribunal members
15. Witnesses G and H. The appellant, the child's father, and the child's mother gave evidence jointly. They lodged a joint statement which is included at A109-117. They gave evidence in support of the statement and were asked questions by their solicitor and the solicitor acting for the respondent. The tribunal members also asked some questions.
16. An independent advocate was instructed to seek the views of the child and the report is found at T37- 38. It was hoped that an updated report could be produced prior to the hearing but this was not possible due to the ongoing restrictions due to the Covid 19 pandemic.

Issues in Dispute

17. The appellant asked the tribunal to overturn the respondent's decision to refuse the placing request for the specified school and the respondent asked the tribunal to confirm its decision. The respondent's position was that the ground of refusal relied on was established and that in all the circumstances it was appropriate to refuse the placing request. The appellant's position was that the ground of refusal was not established and the tribunal should use its power to require the respondent to place the child in the specified school.
18. The ground of refusal relied upon by the respondent is set out at paragraph 3(1)(f) of schedule 2 to the Act. Paragraph 3(1)(f) has 4 constituent parts and the conditions in each part must be satisfied for the ground of refusal to be established. It was a matter of

agreement between the parties that conditions (i) and (iv) of the ground of refusal set out at paragraph 3(1)(f) applied. The dispute between the parties was whether conditions (ii) and (iii) applied.

19. The disputed conditions are:

“(ii) the authority are able to make provision for the additional support needs of the child in school A (whether or not a school under their management) other than the specified school,

(iii) it is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified school and in the school referred to in paragraph (ii) (in this case school A), to place the child in the specified school.”

20. In reaching our decision we had regard to all the available evidence and made the following findings in fact relevant to the issues in dispute.

Findings in fact

The child

21. The child was 10 years of age at the date of the hearing. The appellant is the child’s father.

22. The child lives with his mother and father and 2 siblings.

23. The child has been educated continuously in the respondent’s local authority area since nursesey school in 2011.

24. He has a diagnosis of autistic spectrum disorder (ASD), has learning difficulties and has social, emotional and behavioural issues. He functions at the early level of curriculum for excellence (“CFE”), or lower.

25. He has very limited speech but is developing in this regard. He likes to sing and can be heard singing recognisable words in songs. He can follow a simple instruction of a two word level.

26. The child is self-directed and impulsive. He has a very short attention span. He has a relatively restrictive diet.

[Part of this paragraph has been removed by the Chamber President for reasons of privacy and anonymity of the child under rule 55(3)(b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]

27. The child has good visual memory and shows strength in matching activities, sorting primary colours, naming 2-D shapes and completing a 20 piece jigsaw puzzle.

28. The child loves the outdoors. He enjoys playing and exploring and physical activity, in particular climbing, which has been identified as a particular release or calming environment for him. He enjoys swimming and finds being in water soothing.

[Part of this paragraph has been removed by the Chamber President in order to preserve the anonymity of the child under rule 55(4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]

29. The child has sensory needs. He enjoys sifting sand and playing with laces and beads. However, if he engages in these behaviours for more than a short period of time he can become overstimulated, repetitive and agitated.

30. The child enjoys massages and reiki which relax him to the point where he will make eye contact and become more engaged. The massage also appears to benefit his feet and legs which have a degree of deformity due to his altered gait.

31. The child loves animals, particularly horses, and responds well to them. He has enjoyed horse riding in the past.

32. The child and his family are well known in their local community. The family make an effort to engage with the community and the child's mother organises charitable events.

[Part of this paragraph has been removed by the Chamber President in order to preserve the anonymity of the child under rule 55(4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]

33. Although the child is self-directed, his parents have encouraged turn-taking with his siblings which he is able to do. The family follow an inclusive, person-centred approach inspired by the Steiner model. They include the whole family in activities, from outdoor activities to gardening and cooking. The child was previously known to run away but this has become much less of an issue over recent months.

34. Between December 2019 and March 2020 the child received weekly sessions of play therapy provided by a counsellor and psychotherapist via funding. The play therapist followed a Steiner-based inclusive approach to which the child responded positively. He developed a relationship with the play therapist over time. On one occasion when they were due to go to the play therapy hall he indicated to the therapist by turning the indicator in the car off that he did not want to go there. When asked what he wanted to do he said "the beach" and pointed in the direction of the sea. He happily went with the play therapist and they played on the sand and rock pools and afterwards he sat on the wall looking out to the sea singing a song.

Schooling to date of hearing

35. The child attended his ante-preschool year at a local mainstream nursery before moving to the nursery at school B for his preschool year.

36. When the child started primary one in 2014 he initially had a full-time placement at school B which is a mainstream primary school in the local catchment. When the child started

in primary one the school did not have an enhanced provision resource, however an enhanced provision resource was opened at school B in 2017.

37. By term 2 of primary one the child had moved to a split placement between school B for three days and school A for 2 days. School A is the local authority special school and the school at which the respondent has offered the child a place.
38. From term 3 of primary one the child was moved to full-time placement at school A with some access to school B for PE and small group activities. He remained at school A as his principal placement until the enhanced provision resource was opened at school B in 2017 and the child transitioned to school B in primary four.
39. During his time as a full time pupil at school A the child was in a class with children with a range of additional support needs. Some of the children required significant attention with physical needs such as toileting or feeding and other children displayed challenging behaviour. The child was generally quiet and undemanding and able to attend his own hygiene needs and therefore did not demand attention. While the teacher's focus was elsewhere, the child was often left to lie on cushions and play with string or beads.
40. During his time at school A teachers would spend a portion of the morning session on Makaton, a form of sign language with which the child has been unable to engage. When the child was much younger his mother took a course on Makaton on the advice of nursery staff, however she found the child could not engage with Makaton, particularly because the child struggles with eye contact which is essential for the proper use of Makaton. While the staff were using Makaton with the other children the child was not able to engage.
41. The child's parents appointed a private tutor to work with the child on a one-to-one basis. The private tutor worked with the child from 2015 until 2019. The private tutor worked with the child on identifying characters from his Oxford Reading Tree books and was successful in this area where school A had been unable to make the same progress.
42. On one occasion in 2016 the child's private tutor observed him in the classroom at school A and noted that the child did not interact with other children and that staff appeared to

spend a disproportionate amount of time attending to the challenging behaviour of other pupils. The child was left largely to his own devices and when he was working with staff appeared to be disengaged.

43. As a result of the child's parents' concerns around his placement at school A it was agreed that when the enhanced provision opened at school B he would be placed there on a full-time basis with access to school A for swimming and outdoor activities such as bikes. He moved to the enhanced provision in school B in 2017 and remained there at the date of the hearing.
44. The enhanced provision in school B is in a small classroom in the middle of a large open plan school. The child is in a class with two other children. There is one teacher and two pupil support assistants ("PSAs"). Although the intention with the enhanced provision is that the child is able to join mainstream classes on occasion, school B have found that the child has not been able to engage in any meaningful way in mainstream classes due to the complexity of his needs. The headteacher of school B considers that school B is unable to meet the child's needs particularly as he is due to transition to high school in 2021 and school B only caters for primary school children.
45. Although the child's parents considered the staff at school B to be very supportive they considered that school B was unable to meet the child's needs and actively considered other possible placements for the child.
46. The child and his parents made 3 visits in total to the specified school. The child's parents were impressed by the staff and facilities at the school and felt that the child enjoyed his time there. The managers of the specified school considered the child would be a suitable candidate for the school as stated in their letter dated August 2018. In September 2018 the appellant wrote to the respondent requesting that the child be placed at the specified school.
47. In December 2018 the respondent wrote to the appellant refusing the placing request and offering the child a place in school A.

48. As at the date of the hearing the child remained in school B with some access to school A mainly to use the swimming pool and outdoor activities including bikes. When he would attend at school A it would be with staff from school B and the child had limited interaction with staff at school A.

49. The child was in primary seven at school B at the date of the hearing. He had only just returned to school in the week or so prior to the hearing. He had been absent from school since March 2020 when the schools were closed as a result of national lockdown due to the Covid 19 pandemic. Despite the extended period of absence he appeared to have settled reasonably well on return to school.

Assessment of needs

50. The child has been known to educational psychology services since nursery school. Witness D was allocated as his educational psychologist in 2018. She has met with the child on a number of occasions and assessed him in the environment of the enhanced provision base at school B. She has not observed him in either school A or the specified school. She carried out an assessment of his needs based on her observations of him and following consultation with his class teacher, headteacher and discussions with his parents.

51. The child requires structure, boundaries, a predictable environment and routines. He needs opportunities to learn through a variety of methods and experiences including practical tasks, hands-on experiences, life skills, focused tasks and play experiences. He responds best when he knows what's expected of him.

52. When the child is engaged and motivated he can focus for a short period of time. He requires regular breaks planned into his day. He requires a quiet environment when working on more focused tasks, though he can cope with a slightly noisier environment for more practical tasks.

53. The child requires adult encouragement to engage with learning experiences which may not initially interest him. He requires support to develop his independence and self-care

skills. He requires verbal prompts and modelling to achieve success including in everyday activities such as preparing a snack and spreading using knives.

54. The child requires concrete materials across his learning. He requires planned activities to continue to build upon and challenge his established learning across different contexts. He tends to give up on a task if he cannot immediately do it and requires significant support to attend to his learning tasks.
55. The child requires support with social interactions. Interactions with adults and small groups of other children help him develop communication skills such as eye contact and turn-taking. His interaction and communication skills are limited which causes him frustrations at times when he cannot get his needs met.
56. The child needs visual supports, modelling and the use of picture exchange communication systems (PECS). The child responds best to simple instructions in context at around the two word level. The child tends to initiate interaction with adults on a needs basis which is being developed through the use of PECS.
57. The child requires time and space both indoors and outdoors to move and run around and sometimes his need for this is demonstrated by unsettled behaviour. Outdoor environments are used to motivate the child and his learning across the curriculum.
58. The child has had an individual education plan (“IEP”) for a number of years. The IEP is supported by a more detailed learning planner which breaks down learning activities and milestones. The IEP and learning planner currently in use at school B could be used as a starting point for future learning in either school A or the specified school.
59. The child requires a significant amount of differentiation in his curriculum and requires significant adult input to remain focused on tasks.

Proposed schooling – School A

Physical Environment

60. School A is the local authority special school for the child's catchment area.

[Part of this paragraph has been removed by the Chamber President in order to protect the anonymity of the child under rule 55(4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]

61. School A has a shallow swimming pool and outdoor play areas with climbing frames, swings and roundabouts. The school has adapted bikes that the children can use and has recently ordered a trampoline for rebound therapy. The school has a home economics room which is used as a general-purpose area with a kitchen where the children can carry out practical activities. The school also has a sensory room and a large gym hall.

Staffing

62. Witness C was appointed full-time head teacher at school A with effect from March 2020, approximately one week before the school was closed due to the national lockdown as a result of the Covid 19 pandemic. He had been employed as acting headteacher at school A since approximately October 2019 until his full-time appointment took effect. He leads a management team of two. There are seven teachers, three early years practitioners and 19 PSAs.

63. Witness B previously taught in mainstream schools, with school A being his first post in a special school. Witness B had not met the child formally, but had seen the child in passing when he came to school A for swimming. Staff in school A have experience of dealing with children with a range of additional support needs but are not required to have any particular postgraduate qualifications in additional support needs or related disciplines. They attend internal training and carried out some free online training in understanding autism during the lockdown period.

64. If the child is placed in school A it is proposed that he would be in a class with six other pupils. In that class there is currently one class teacher, an early years practitioner and

2 PSAs. If the child were to join that class it is likely an additional PSA would be employed to ensure appropriate adult to child ratios.

Curriculum and Communication Strategies

65. School A follows the national curriculum to allow pupils to access a range of subjects within CFE. Qualifications are offered at National 1 to 3 level with some pupils accessing the local mainstream school for subjects beyond that level. The pupils all have individual education plans. The IEPs are scheduled for termly reviews. The children have sensory profiles prepared in collaboration with occupational therapy.
66. School A follows a total communication strategy which means they will use a variety of different communication methods and also employ intensive interaction on occasion. School A frequently use Makaton and have a Makaton choir with weekly assemblies.
67. Children are grouped into classes broadly based on their age and stage. There is a range of needs in each classroom and there is some whole class and small group working. There is daily literacy, numeracy and health and well-being input. There are opportunities for the children to self or co-regulate and to use sensory learning as well as have access to outdoor spaces. Children sit together at snack time and lunchtime and have opportunities for outdoor play.
68. The school has links with the local community and take the children on practical visits to the local shops, cafes or garden centre. They have had the opportunity to use carriage riding and the school have applied to the Riding for the Disabled (RDA) with a view to increasing opportunities for horse riding.
69. Prior to lockdown the school had weekly visits from speech and language therapy ("SALT"). SALT staff would visit children specifically on their caseload or work with staff on communication strategies. In February 2019 it was agreed with the child's mother that the child should be discharged from direct input from NHS SALT once he had achieved the targets he was working on at that time. A SALT report in February 2019 stated, however, that parents and school staff could contact the SALT department in the future for additional support without needing to make a formal re-referral.

70. School A is not accredited by the National Autistic Society (“NAS”). Other special schools within the respondent area have applied for and received accreditation. The school had not applied for accreditation and the headteacher, witness C, as at the date of the hearing was still considering whether to apply for accreditation.

Inclusion and Peer group

71. All children who attend school A have additional support needs. 21 of the pupils have ASD. It is proposed that the child would be placed in a class with 6 other children, ranging from P4 to P7 stage. Two of the children have ASD and the others have a range of different needs arising from a variety of conditions. One of the children has cerebral palsy and requires assistance with toileting and moving on to a frame. One of the other children is known to display physically challenging behaviour which has resulted in others being hurt.

72. The pupils at school A will have the opportunity to mix with each other at school assemblies and other school events. The children do not generally have the opportunity to mix with children who do not have additional support needs, other than through community visits.

Outdoor learning and therapy opportunities

73. School A has a secure site with fencing all around and the children have the opportunity to use the outdoor areas. Children have PE twice a week which is either indoors in the gym hall or outside.

74. Children also have access to adapted bikes and to the school allotment. School A has a sensory room. Six members of staff have been trained in rebound therapy and the school has recently purchased a trampoline for the purpose of rebound therapy. Pupils have Kodaly music sessions once a week.

75. School A is also supported by the local community and the children have had visits from various groups such as a local theatre group, bell ringers, emergency services and animal visits.

76. Other than SALT the school do not have any other therapists attending on the regular basis. The school have a shallow swimming pool and employ a swimming teacher.

Costs

77. School A is the local authority special school. Additional costs to the respondent for placing the child in school A would include transport costs of approximately £950 per annum. In addition if the child was placed at school A another PSA would be employed. The estimated cost to the respondent of a PSA is £15,600 per annum. Witness C, as headteacher of school A, would be able to decide on the use of an additional PSA without further recourse to the respondent and the cost of a PSA could come directly from within his own budget, which can be spent at his discretion.

The Specified school

Physical environment

78. The specified school is an independent school approximately 12 miles from the child's family home. It provides education, care and therapy services for children and young people with autism and other additional support needs on a day or residential basis.

79. It has three estates with school buildings, therapy rooms and gardens. There is a working farm, a large vegetable allotment, stables and horse riding facilities, wooded areas, a climbing wall, balancing, swinging and play areas. There are also two gymnasiums, a physiotherapy room, a swimming pool and a dedicated therapy building. There are on site craft workshops offering pottery, wood turning, candle making and other types of crafts. There is a GP surgery on site.

80. If the child were to be placed at the specified school he would be placed in the main school estate. In the main school estate there are seven classrooms, and there are also

quiet rooms which are used by some children specifically, while others can be allocated as generic quiet rooms. Where a quiet room is allocated to a particular child there will be equipment within that room according to the child's needs. The child would also have access to the facilities across the whole school estate.

Staffing

81. There is a large complement of staff led by witness A who is the Head of Education. The school employs eight teachers and 23 PSAs. Witness A and all teaching staff have completed a degree in social pedagogy. The school has a dedicated outdoor learning lead teacher who encourages outdoor learning activities and sports. The school has a speech and language therapist who visits four times a month, two massage practitioners, an art therapist and a play therapist. The school uses many visual aids to enhance communication and understanding, and employs a trained Communication Support Facilitator. This member of staff supports the production of visual aids and helps staff to use them appropriately.

82. If the child were placed in the specified school he could be placed in a class with three other boys. There would be four pupils in total with one class teacher and three PSAs. It is likely that initially the child would have one-to-one support until a process of assessment has been carried out and if it is decided that he requires one to one support on a permanent basis then this will be provided.

83. School A have a training framework, strategy and plan which ensures all staff complete in depth induction training and ongoing training and professional development. The school employ coaching and mentoring strategies with staff and share knowledge within the staff grouping. Staff are provided with training on the ethos of the school and the person-centred approach followed. They are also provided with autism specific training and training on a range of different communication and behavioural support strategies.

Curriculum and communication strategies

84. School A follows the Steiner ethos and philosophy. This means that school A is committed to a holistic, nurturing, communal approach with an emphasis on a range of therapeutic interventions to complement the curriculum and to help individuals lessen their anxieties and learn about others and the world around them. The curriculum is highly individualized to meet each pupil's needs and to help them develop in their own way.
85. School A is accredited by the National Autistic Society ("NAS"). The school have been assessed by NAS, most recently in February 2020. The 2020 report highlights a number of areas in which the school perform particularly well, along with some areas where consideration could be given for further development. Overall, the report is in favourable terms and details the extent of provision available for supporting children with ASD.
86. The report has some key findings and states that "the provision across education, day services and residential care is truly person-centred with excellent levels of participation from individuals being supported. The involvement of each individual and the flexibility shown by staff within the service to the development of bespoke and unique support packages is notable. A range of therapeutic approaches sit comfortably alongside academic skills-based curriculum to provide individuals with a holistic package of daily support".
87. School A offers pupils an individual holistic educational experience. The children have IEPs and personal individual timetables. Sensory assessments are undertaken by School A in order to create sensory profiles for its pupils.
88. There are children at the specified school working at early level of the CFE and the school offer the full range of the curriculum from National 1 to Highers. The school also offer Duke of Edinburgh awards and for children who are unable to achieve a Duke of Edinburgh award there is also a programme known as the junior award school scheme ("JASS"). This scheme allows children at all levels of the curriculum to participate and to gain a certificate and badge. The awards are incorporated into the school timetable but can also be done on an extracurricular basis as appropriate. The awards can be in different areas where a child has a particular interest and allow each child to participate

and gain a sense of achievement. The school holds award ceremonies where badges and certificates are presented.

89. For children working in the early stages of CFE the specified school breaks their progress down within those stages to early, middle and end to help identify small but important steps where the child has progressed.
90. The specified school follows an inclusive communication strategy. Staff work on relationship building and look at a range of strategies which they might use in order to support the child's communication. Staff act as the child's communication partner and identify strategies to encourage and develop the child's communication skills.
91. Children are grouped into classes based on their needs. The class sizes range from 2 to 12 pupils. The pupils follow their own individual learning pathways with a mixture of class, group and individual activities.
92. If the child is placed at the specified school he will be in a class with three other boys of a similar age. Although the children will be placed in a class grouping they may only be in class together for short periods as they will all follow their own individual timetable and may separate out for workshops or therapies. Workshops may be based on life skills development or areas where the child has a particular interest, but there will always be a curriculum focus and links to CFE. Outcomes are identified and progress monitored.
93. The school also has links with the local community (shops, library, ice skating, litter-picking) and has developed some partnership work with the neighbouring high school. The school has a number of transport options including mini-buses and private cars enabling staff to drive the children to the local community to participate in activities.

Inclusion and Peer groups

94. As of January 2018 there were 47 children on the school roll, between the ages of six and 18. 23 of the children have ASN and 24 of the children do not have any additional support needs. Of the children with ASN, 16 are diagnosed with ASD.
95. It is proposed the child would be placed in a class with 3 other boys, all with ASN. Two of the children have ASD.
96. Although the children are placed in class groupings based on their needs the children do have the opportunity to mix with the other children in the school who have no ASN. This can be at school events such as sports days and at assemblies and there is an opportunity for the children to play together in outdoor areas. The child would have the opportunity for adult facilitated peer interactions. This could develop his social skills and reduce his isolation.

Outdoor learning and therapy opportunities

97. The children have access to the full range of outdoor learning facilities including wooded areas, a working farm, gardens, stables and climbing equipment, all offered on-site.
98. Many of the pupils in the school follow a curriculum with a significant focus on outdoor learning. For some children outdoor learning can account for 50% of their curriculum and for others it can be as much as 80%. While participating in outdoor learning the children will be working on key targets identified in the IEP or individual timetables.
99. The specified school has two gymnasiums, a swimming pool and indoor and outdoor horse riding facilities. They have bikes available for the children to cycle around the grounds and between the different campuses as appropriate.
100. The specified school has outdoor play equipment to allow opportunities for climbing and swinging. There is a climbing wall which the child used when he attended at an Open Day. The child was keen to try the wall even although he had never undertaken such a task before and followed instructions perfectly to achieve a safe ascent and descent, much to his parent's delight.

101. The school has large grounds and a working farm and the pupils are allowed access to the animals. Equine therapy is also offered. SALT attend the school at least four times per month.
102. The school provides various therapies aimed at meeting the sensory needs of its pupils which includes music therapy, movement therapy and rhythm therapy. The school also offers play therapy and counselling. The school has a physiotherapy room and massage therapists.
103. If the child were to attend the specified school he would potentially have access to all the available therapies on site and it is likely that he would have therapies incorporated into his curriculum. While an initial period of assessment will be required it is likely that some of the therapies offered to the child could include massage therapy and play therapy. In addition the child may also have regular access to SALT, who will carry out an initial assessment.
104. School A also has a medical centre on site.

Costs

105. The exact cost to the respondent to place the child in school A was not known at the date the placing request was refused or by the date of the hearing. The basic weekly cost is £785 per week which would amount to £31,400 per annum for a 40 week school year. That cost includes 7.5 hours per week of additional one-to-one staff time. The level of support required after a period of assessment would be reviewed and the cost may increase or decrease depending on the level of individual support required.
106. The child will require transportation to school. The child's parents have discussed with another family the possibility of sharing transportation to the school. In principle it was agreed by them that the child could share transport with another child from the area who attends the school although this has not been approved by the respondent. If the child were to use the shared transportation facility the additional cost of respondent would be minimal. If the child requires individual transportation to the school this would cost

approximately £16,000 per annum with an additional £4000 per annum for the provision of an escort.

107. As at the date of the hearing there were 12 pupils attending the specified school for whom the respondent was responsible for their education. Approximately nine of those children had been placed there directly by the respondent and three of them had been placed there following a successful reference by the parents to the additional support needs tribunal.

Reasons for the Decision

108. We found the witnesses to be largely credible and reliable and their evidence extremely helpful. We considered all of the evidence and we were satisfied that there was sufficient evidence available for us to reach a decision on the reference. We were grateful to the solicitors for the written and oral submissions which were of assistance.

109. In reaching our decision we considered the statutory provisions of the Act relevant to this reference.

Section 1

110. Section 1 of the Act provides:

“(1) A child or young person has additional support needs for the purposes of this Act where, for whatever reason, the child or young person is, or is likely to be, unable without the provision of additional support to benefit from school education provided or to be provided for the child or young person.

(2) In subsection (1) the reference to school education includes, in particular, such education directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential.

(3) In this Act, “additional support” means –

(a) in relation to...a child of school age or a young person receiving school education, provision (whether or not educational provision) which is additional to, or otherwise different from, the educational provision made generally for children, or as the case may

be, young persons of the same age in schools (other than special schools) under the management of the education authority.

111. It was a matter of agreement between the parties, and we found as a matter of law, that the child has additional support needs in terms of s.1 of the Act.

112. The remaining parts of section 1 detail the meaning of school education and additional support needs and we applied those meanings when reaching our decision as more fully explained below.

Schedule 2, Paragraph 2(2)

113. Paragraph 2(2) of Schedule 2 of the Act provides:

"Where the parent of a child having additional support needs makes a request to the education authority for the area to which the child belongs to place the child in the school specified in the request, not being a public school but being – (a) a special school the managers of which are willing to admit the child...it is the duty of the authority, subject to paragraph 3, to meet the fees and other necessary costs of the child's attendance at the specified school."

114. The appellant made a placing request to School A which is not a public school and the managers of School A confirmed by letter dated 23/08/2018 they are willing to admit the child.

Schedule 2, Paragraph 3 (1)

115. Paragraph 3(1) of Schedule 2 of the Act provides:

(1) The duty imposed by paragraph 2(2) does not apply –

... (f) if all the following conditions apply, namely -

(i) the specified school is not a public school;

(ii) the authority are able to make provision for the additional support needs of the child in a school (whether or not under their management) other than the specified school;

- (iii) it is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified special school and in the school referred to in paragraph (ii), to place the child in the specified school, and
- (iv) the authority have offered to place the child in the school referred to in paragraph (ii).

116. This is the ground of refusal relied upon by the respondent and we will turn to each constituent part of the test below. The tribunal's powers in relation to the reference are contained in section 19.

Section 19 (5)

117. Section 19(5) of the Act provides:

"Where the reference relates to a decision referred to in subsection (3)(e) of that section, the First Tier Tribunal may –

(a) confirm the decision if satisfied that –

- (i) one or more of the grounds of refusal specified in paragraph 3(1) or (3) of Schedule 2 exists or exist, and
- (ii) in all the circumstances it is appropriate to do so,

(b) overturn the decision and require the education authority to –

- (i) place the child or young person in the school specified in the placing request to which the decision related, and by such time as the First-tier Tribunal may require"

118. There is a two-stage test in terms of section 19(5)(a) as set out above: Firstly the tribunal requires to determine if the respondent has established the grounds of refusal in paragraph 3(1)(f). Secondly the tribunal has to consider whether in all the circumstances it is appropriate to confirm the decision of the respondent.

Ground of refusal: Schedule 2 Paragraph 3(1)(f)

119. The onus is on the respondent to satisfy the tribunal that all the conditions in Paragraph 3(1) (f) are met in order to establish that the ground of refusal exists. Parts (i) and (iv)

are not in dispute but for completeness we will now deal with each branch of the relevant ground of refusal in turn.

(i) *the specified school is not a public school*

120. It is agreed that the specified school is not a public school. We find that this branch of the ground of refusal is established.

(ii) *the authority are able to make provision for the additional support needs of the child in a school (whether or not a school under their management) other than the specified school.*

121. This branch of the ground of refusal is in dispute. The respondent's position is that they are able to make provision for the additional support needs of the child in school A. The appellant's position is that the respondent has not demonstrated that they are able to make provision for the child's needs in school A.

122. It was the appellant's submission that in order to establish this branch of the test had been met, the respondent was required to demonstrate to the tribunal that they had carried out an assessment of the child's needs in their entirety and that all of those needs could be provided for at School A. The question is to be answered on the basis of the child's needs as they exist at the time of the hearing.

123. The case law referred to by appellant supports the proposition that those needs required to be stated in a more general all-encompassing and holistic way, rather than by endeavouring to separate out educational support on one hand and, for example, social work support on the other. The meaning of additional support in section 1(3) referred to above makes it clear that additional support (to benefit from school education) includes provision which is non educational as well as that which is educational.

124. In reaching our decision we assessed all the evidence and made the findings in fact detailed above. In applying those facts to the legal test as set out in the legislation and case law we came to the conclusion that this branch of the test was **not** met.

125. While we considered that the respondent's witnesses were broadly credible we did not consider that when taking their evidence together and weighing it against the other evidence available to us we could conclude that the child's needs in the fullest sense could be met at school A.

126. This is because Section 1(2) of the Act referred to above refers to school education as education directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential. We did not consider that the evidence supported a conclusion in law, when we have regard to the statutory definitions and case law, that the respondent was able to make provision for the additional support needs, as correctly defined, of the child in school A.

127. We came to this conclusion for a number of reasons. The reasons are specific to the needs of the child and are not an indication of our view in relation to the suitability of school A for the needs of children with ASN generally. We had no doubt that the respondent's staff were committed and were able to meet the needs of a number of the children in their care, however we conclude that given the nature of the child's specific needs in their entirety the respondent was not able to meet the needs of the child in School A. The reasons for our conclusion are set out in the sub paragraphs below.

Previous experience of educational placements and class profile

128. We noted that the child had been educated by the respondent throughout his nursery and school education and a number of different options had been tried, including blended placements and none had fully met the child's needs. We considered the appellant and the child's mother's evidence on this to be particularly strong. They know the child best and gave a clear account of the difficulties encountered by the child in each of his placements. Their evidence in relation to the time the child spent at school A on a full time basis was also supported by the evidence of the child's tutor who had direct experience of observing the child in school A, albeit approximately 4 years ago. None of the respondent's witnesses had directly observed the child in a classroom setting in school A.

129. In addition there were some limitations in the evidence of the respondent's witnesses on the ability of school A to meet the child's needs. Witness B was the head teacher of the child's current school and was able to speak of the child's experience in school B and confirmed her view that his needs could not be met in school B. When asked about school A she was careful to say that as an employee of the respondent, and that where her school cannot meet a child's needs, her next option is to consider school A. She did not categorically state that it was her opinion that school A could meet his needs.
130. Witness C, as headteacher of school A, indicated he was satisfied that the school could meet the child's needs. However, we noted that witness C had never met the child (other than in passing) and had no direct knowledge of his needs.
131. In addition witness C was only very recently in post as headteacher of school A and was new to the special school environment. He had only had a few weeks as head teacher when pupils were actually attending the school due to the school closures. Although he stated that the staff had a good understanding of ASD and providing for a child with those needs, he indicated that the school had not sought accreditation with the NAS and he was not sure if he would be in a position to apply for same, particularly having regard to the time commitment required.
132. Furthermore, witness C did not provide a full account of the needs of the other children likely to be in the child's class. He stated that the other children did not display particularly demanding or challenging behaviour. However, we accepted the appellant's evidence to the effect that they had direct knowledge of one of the children in the class group who had significant behavioural issues and shared the appellant's concern that disproportionate staff time could be spent managing such behaviours which would potentially leave the child without the intensive support he requires (which reflects the previous experience of the child in school A).
133. Witness D had clearly spent some time with the child and had conducted a thorough assessment of his needs. She had also completed the Options Appraisal exercise referred to by the respondent in reaching the decision to refuse the placing request. She was very firm in her opinion that the child's needs could be met at school A. Her evidence was clearly driven at maintaining that position, almost to the exclusion of considering any

alternative view. She was adamant that because she felt his needs could be met at school A there was no need to actively consider placement in an out of authority provision such as the specified school. As part of the options appraisal, she had only spent 10 minutes in the classroom proposed for the child at the specified school and had no knowledge of the profile of pupils in the proposed classroom at the specified school. We considered that this would not have given her an adequate amount of information upon which to give a balanced view in the options appraisal process. Witness D placed emphasis on her concern that the child would be isolated from his community if he went to the specified school. When challenged on this in cross-examination, she maintained her position. We also considered that the fact the witness had not observed the child in school A, and was dismissive of the concerns raised regarding school A by the child's parents and his private tutor may have led her to exclude the possibility that these were genuine concerns based on unmet needs at school A.

Curriculum and communication strategies

134. We were also concerned that the curriculum, and in particular the communication strategies employed at school A would not meet the child's needs. We accepted his mother's evidence that Makaton did not work for the child and shared her concern that the child would be disengaged and possibly confused during periods when Makaton was actively used. We were concerned that the total communication approach could also be confusing for the child if so much was going on around him all the time.
135. We accepted the evidence that the child was very self-directed and required an individual approach, outdoor learning and therapeutic input and were concerned that this holistic approach could not be provided within school A. We considered this was partly as a result of the nature of the pupil body and the competing demands that necessarily placed on the resources at school A and our conclusion in this regard is not a criticism of the provision provided, simply a recognition that the specific needs of the child could not be met at school A.
136. We did note that the child's parents were keen to stress that they did not consider school A to be a "bad school", simply that it could not meet the child's needs. They expressed the view that they would be failing the child if he was placed in school A and

that they would rather move the whole family to another area if necessary than place the child in school A. We did not consider the child's parents had taken this view lightly and it appeared to us that they had put considerable thought into their position and this was based on a true understanding of the child's needs and a desire to ensure those needs were met, whatever that may mean for the family as a whole. The child's parents were also keen to express appreciation for the efforts of the child's current class teacher and were content for him to remain in school B until the end of 2020 to allow a reasonable period of transition for the child.

137. Overall we considered that despite what may have been the best efforts of the respondent's staff they were simply not able to meet the child's additional support needs, as fully understood, with the provision available at school A.

(iii) it is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified special school and in the school referred to in paragraph (ii), to place the child in the specified school,

138. As we did not find that part (ii) of the test was met the respondent has failed to establish the ground of refusal having not met one of the four essential component parts of the test. It is therefore unnecessary for us to go on to make a determination on part (iii). However, even if we had found that the respondent was able to meet the additional support needs of the child at school A, we would not have found this part of the test was met.

139. The test is essentially a negative test, and the onus is on the respondent to show that it is not reasonable, when having regard to the respective suitability and costs, to place the child in the specified school.

140. In reaching a decision on this part of the test the tribunal has to firstly look separately at both the suitability and the cost of the provision in each of the schools. Secondly the Tribunal is then to consider the suitability and the costs together and to make a decision on reasonableness.

Respective suitability

141. In terms of respective suitability we considered a number of factors and the findings in fact above in relation to each school are grouped according to some of the factors considered. The factors listed were not exhaustive but represented some of the major areas considered. Taking the factors together we consider that the specified school was overwhelmingly more suitable for the child and the education provided there was significantly more likely to be directed to the development of the personality, talents and mental and physical abilities of the child to his fullest potential.
142. We considered that the physical environment at the specified school was more suitable for the child than the environment in school A. The specified school had far superior facilities and grounds with wooded areas, working farm, outdoor climbing wall, stables, workshops and therapy rooms. As witness F put it, everything the child could possibly want or need could be available at the specified school.
143. We also considered that the staffing at the specified school would be more suitable for the child as there were a range of professionals available with significant experience, qualifications and training in dealing with children with needs such as the child's. The staff were all trained in the Steiner approach which has been adopted by the family and we considered that the child would benefit from this consistency of approach.
144. We also considered that the curriculum and communication strategies at the specified school were more suitable to the child's needs. There was a greater focus on a holistic approach and individualised therapeutic interventions and planning. There was also a focus on an inclusive communication strategy which we considered was better suited to the child's needs than the total communication strategy at school A.
145. Furthermore, we considered that the fact that the specified school was accredited by the NAS to be a significant, although not determinative factor on respective suitability. The appellant's solicitor drew our attention to a number of previous cases in which the significance of NAS accreditation was considered and while we recognise that each case turns on its own facts and circumstances there is certainly support in the case law for the proposition that NAS accreditation may be a factor of some significance. In this case we

considered that the specified school had been through the intensive scrutiny of a recent inspection by NAS accreditation and had received a positive recent report which provided reassurance that the specified school had the expertise and resources to provide an appropriate and tailored educational experience to children affected by ASD.

146. We also considered that there would be better opportunities for inclusion for the child if he was placed at the specified school. He would have the opportunity for adult mediated peer interaction both with children with, and those without, additional support needs.

147. We also considered that the outdoor learning and therapy opportunities were significantly better in the specified school than in school A. In particular we accepted the appellant's witnesses' evidence that the child was much more relaxed and likely to engage when he had experienced 1:1 therapy whether that be by way of play therapy, massage, reiki or equine therapy. He also required the sensory release of climbing and other physical pursuits which were better catered for at the specified school.

148. We did take into consideration the fact that it can be argued that it is more suitable for a child to be placed in a school close to his home and the proposition put forward by the respondent that the child would be able to form stronger community links if he attended school A. However, the specified school is only 12 miles from the family home so is not entirely outwith the wider area and we accepted the child's parents' evidence that the child and family were firmly integrated within the local community and would continue to be so regardless of where the child attended school.

149. Overall taking all of the factors above into account we considered that the specified school was more suitable for the child's needs.

Costs

150. We noted that the parties had agreed that the estimated cost to the respondent for the provision of the child's placement at the specified school is approximately £31,400 per annum, but this could be subject to review following assessment. We also considered that if the child did require transportation and an escort the additional transport cost would add £20,000 per annum to that figure.

151. Taken against that figure we considered the transport costs of £950 per annum for the child to attend school A. We also considered the argument that the costs of an additional PSA would have to be factored in to the costs to the respondent of educating the child in school A. Standing our finding that the respondent had failed to make out part (ii) of the ground of refusal we did not need to make a determinative finding on this point but if we had needed to do so, we would have found that the cost of the additional PSA would fall within the definition of respective costs for school A and therefore that the total cost to the respondent in placing the child in school A would be £16,550 per annum.
152. Taking account of those figures it would appear that the differential in cost between the 2 provisions would be in the range £14,900 (if no transport costs were incurred due to the proposed shared arrangement) to £34,900 (if full transport and escort costs were required).
153. We accepted the appellant's submission that the respondent had failed to provide evidence which would allow us to consider whether or not a differential in the region of £15-35,000 could be considered significant in the context of the overall education authority budget. The only context it was submitted was the evidence that the headteacher of school A had the discretion within his own budget to incur a cost of £15,600 for the additional PSA. Furthermore, it was suggested that the fact that the respondent had 12 children already placed at the specified school could give rise to the implication that the costs of the specified school were not considered inherently unreasonable by the respondent.
154. We considered that even although it was demonstrably more expensive for the child to be placed at the specified school, and regardless of whether or not the amount could be properly considered significant in the context of the respondent's overall education budget, it was not reasonable for the respondent to place the child in the specified school when having regard to the overwhelming conclusion on suitability. In the circumstances where the child's needs could not be met at school A and the specified school was very suitable for the child's needs we considered that in all the circumstances it could not be said that it was not reasonable to place the child in school A.

(iv) the authority have offered to place the child in the school referred to in paragraph (ii).

155. It is agreed that the respondent has offered to place the child in school A. We find this branch of the ground of refusal is established.

Conclusion

156. As we did not find the ground of refusal relied upon by the respondent to have been established it was not necessary to consider the overall appropriateness of the placement. We have overturned the respondent's decision and require the respondent to place the child in the specified school as a day pupil by the start of the January 2021 term.

157. We are grateful to the parties for the manner in which the case was presented, particularly in the unusual circumstances of the pandemic and the manner in which all involved adapted to the challenges of a hearing by video conference. We hope all involved can now work together in achieving as smooth a transition as possible for the child.