

## **DETERMINATION**

**Case reference:** ADA 2477

**Objector:** A parent

**Admission Authority:** The Governing Body of Our Lady and St Kenelm Catholic Primary School, Dudley

**Date of decision:** 17 September 2013

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the governing body of Our Lady and St Kenelm Catholic Primary School, Dudley.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Adjudicator by a parent (the objector), about the admission arrangements (the arrangements) for Our Lady and St Kenelm Catholic Primary School, Dudley (the school), a voluntary aided primary school, for September 2014. The objection is to the reasonableness of the school's catchment area and to what the objector states is the failure of the admission authority to consult on it at any time in the last seven years.

### **Jurisdiction**

2. These arrangements were determined under section 88C of the Act by the school's governing body which is the admission authority for the school. The objector submitted his objection to them on 25 June 2013. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and that it is within my jurisdiction.

### **Procedure**

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

4. The documents I have considered in reaching my decision include:

a. the objector's email of objection dated 25 June 2013 and his form of objection dated 7 July 2013;

b. the joint response made by the school, Dudley Metropolitan Borough Council which is the local authority (the LA), and the Roman Catholic

Archdiocese of Birmingham (the diocese) (the responders) to the objection, and supporting documents provided therewith;

c. the LA's composite prospectus for parents seeking admission to schools in the area in September 2014;

d. confirmation of when consultation on the arrangements last took place;

e. copies of the minutes of the meeting of the governing body at which the arrangements were determined;

g. a copy of the determined arrangements, and

h. the Trust Deeds of the diocese.

### **The Objection**

5. The school's admission arrangements give priority to two groups of baptised catholic children who live within the parish of Our Lady and St Kenelm (those who have siblings at the school, followed by those who do not) above baptised catholic children who live elsewhere. The objector refers to paragraph 1.14 of the Code which requires that catchment areas for schools "**must** be designed so that they are reasonable and clearly defined". He believes that it is not reasonable for the school's catchment area to be based on the location of the Parish church, which is 0.6 miles from the school itself.

6. The objector also cites the Code's glossary which states that a school's catchment area must "be consulted upon, determined and published in the same way as other admission arrangements". He states that he can find no evidence that the catchment area used by the school has ever been consulted on, and correctly points to the requirement that there be consultation on admission arrangements at least every seven years (paragraph 1.42 of the Code), even when no changes to them are proposed.

### **Background and Consideration of Factors**

7. The objector lives in the adjacent parish to that of Our Lady and St Kenelm, and has applied unsuccessfully for a place at the school for his child. He has pointed out that the use by the school of the parish boundary as its catchment area means that some children living further away from the school, and in the area of a different local authority, have a greater chance of being admitted than other children who live nearer to the school and within the local authority area in which the school is situated. He believes that this renders unreasonable the use of the parish boundary as the catchment area for the purpose of determining admissions to the school.

8. A joint response to the objection from the school, LA and diocese has referred me to the Trust Deed of the Archdiocese and the provisions there relating to education which state that one of its purposes is the "maintenance and upkeep of schools ....for the general education ...of children and young

persons of the said Church". It says that the trustees of the Diocese provide schools to serve the parish areas, and that its model admissions policy, which is followed by the school, employs the relevant parish as a catchment area. The boundaries of parishes are determined by the Diocesan Boundary Commission and details of these are available through the Archdiocese's website and at churches and schools. The responders say that a number of parishes in the Archdiocese do not follow local authority boundaries and that many have some rural areas within their boundaries.

9. In other words, the view being expressed by the responders is that the school is typical of others in the Archdiocese. The Archdiocese meets the terms of its Trust Deed by providing schools established to serve principally the area of a particular parish. The parish of Our Lady and St Kenelm is, they tell me, like many others in having areas of high and low density of population. That is to say, they are all aware that the use of the parish boundary as the definition of the school's catchment area is likely in many instances within the Archdiocese to result in the kind of pattern of admissions complained of by the objector, in which distance from the school is less related to the chance of admission than is residence within the parish.

10. So the objector and the responders do not disagree as to the effect which the designation of the area of the parish as the catchment area for the school has on the pattern of admissions to it. The question which I must consider is whether the catchment area has been designed so that it is reasonable, as required by the Code.

11. It seems to me that the design of a catchment area could fail to be reasonable in one of two ways. Firstly, it could be unreasonably designed if the purpose or effect of that design were to deny access to the school to a person or group unlawfully. An example would be the use of a catchment area which resulted in unfair disadvantage to a child from a particular racial or social group in the way proscribed in the Code at paragraph 1.8. Secondly, it seems to me that the requirement as to reasonableness of design means that there must also be a reasonable basis for the designation of the catchment area itself. Since the purpose of a catchment area is, like other oversubscription criteria, to give priority to some children over others if the school is oversubscribed, this should not be done arbitrarily, but on a basis for which there is a reason, or at least a rationale, since this is then susceptible to challenge and amendment.

12. Although the objector does not make his case explicitly on the grounds of any desire to secure education of a particular denominational character, the school's arrangements give priority to those who live in the catchment area only among catholic children applying for places, and do not do so among non-catholic children who are seeking a place. The objector is in practice saying that he is at a disadvantage compared to other catholics in securing a place at the school because he does not live in the catchment area.

13. In considering whether this makes the design of the catchment area unreasonable, I am mindful that the law provides no entitlement to equal access to denominational education of a particular kind for parents. Any

oversubscribed school which provides denominational education must use oversubscription criteria which mean that some parents have more chance of obtaining a place there than others. If there is no equivalent provision equally accessible for the parents with lower priority at one school through priority at another school, this is not the fault of the first school's arrangements. There is no requirement that the first school should take such matters into account. The admission arrangements of Our Lady and St Kenelm School are clearly designed to give priority to some catholic families over others, but there is no legal entitlement that they infringe in doing so, and so they cannot it seems to me be said to be unreasonable from this point of view.

14. Although it is not directly relevant to my consideration, it is nevertheless the case and worth noting in passing that there are four other catholic primary schools located within the wider area. The diocese tells me that there is no evidence of an overall shortage of places for catholic children in the area, and although the objector has disputed the diocese's view of travel times to these other schools, he would in my view have reasonable access to them.

15. The Archdiocese has told me that it provided a school in the parish on the basis of an assessed need for catholic education there, that there was a parish contribution to the cost of the building and that the parish also continues to contribute to its upkeep. It seems to me to be a reasonable approach that catholic children living in the area defined by the parish boundary are therefore given priority over other catholic children if the school is oversubscribed, which is what the school's admission arrangements do. In other words, the use of the parish boundary to define a catchment area for the school is not an arbitrary design, but has in my view a reasonable basis.

16. The fact that the school is not in the same location as the parish church does not it seems to me alter this position, since the school is explicitly attempting to provide education for those of the catholic faith living in the parish, and not necessarily those who live nearest to the school. If there is a choice between using distance from the school and residence in the parish to determine access to places at the school, it has chosen the latter, as it may do without infringing any of the requirements concerning admission arrangements, in my view.

17. I do not see that the design of the catchment area is unreasonable, either in its effect or in its nature. Therefore, I do not agree with the objector that the use of the parish boundary as the school's catchment area is in breach of the requirement that the catchment area be designed so that it is reasonable.

18. The responders have said that the school consulted last on its admission arrangements for admissions in September 2012, and that there have been no changes made to the arrangements since that time requiring further consultation. I have asked to be provided with evidence of that consultation. The LA has sent me a copy of an e-mail sent to all schools in the authority's area dated 29 November 2010 but is unable to locate a copy of that which it says it sent at the same time to neighbouring local authorities. The LA placed an advertisement in the local press as part of the consultation process and has provided me with a copy of this notice, which points readers to the LA's website to access the proposed arrangements and explains how to raise an

objection to them. The consultation met the requirements set out in the Code concerning its timing and duration. The use of the parish boundary as the school's catchment area is clearly stated in the arrangements which also state that a map of the catchment area is available at the school, through the parish or that enquirers will be sent a copy on request. I have been informed that the governors received no comments in response to this consultation, which I am satisfied met the requirements for such consultation set out in paragraph 1.44 of the Code.

19. In correspondence the objector accepts that the responders say that this consultation took place, but complains that it applies to an earlier year and not to the arrangements for 2014/15 which are those concerning which he has made his objection. He had set out in making his objection that the minimum requirement is that there be consultation every seven years, not every year, which is correct unless the admission authority proposes changes to the arrangements. The school has not proposed any changes to its arrangements since the last consultation concerning them in 2010. I do not agree with the objector that the school has failed to meet the requirement that the school's catchment area be the subject of consultation as set out in the Code.

20. The objector also refers to statements made by the diocese concerning possibilities about the school's admission arrangements for September 2015. My jurisdiction is limited to considering the arrangements for 2014 and it is for the governors to decide whether any changes to the arrangements for September 2015 should be considered, and if so what those changes might be. They would then need to consult before making a final decision when determining the arrangements.

### **Conclusion**

21. I have set out in the preceding paragraphs the reasons why I have concluded, firstly, that the use by the school of the parish boundary as its catchment area does not mean that the catchment area has been unreasonably designed as part of the school's admission arrangements.

22. Secondly, I have explained why I have come to the view that the school has not failed to meet the requirements of the Code concerning consultation about the catchment area.

23. I do not, therefore, uphold the objection.

### **Determination**

24. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the governing body of Our Lady and St Kenelm Catholic Primary School, Dudley.

Dated: 17 September 2013

Signed:

Schools Adjudicator: Dr Bryan Slater