



DETERMINATION

Case reference: VAR695

Admission Authority: The governing body of Guardian Angels Catholic Primary School, Birmingham

Date of decision: 9 December 2016

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I approve the variation to the admission arrangements for Guardian Angels Catholic Primary School.

I determine that for admissions in September 2017 the admission arrangements shall include priority for baptised Catholic children of a member of staff employed in a senior management position in the school for two or more years at the time the application is made.

The referral

1. The governing body of Guardian Angels Catholic Primary School (the school), the admission authority of the school, has referred to the Adjudicator a proposed variation to the admission arrangements for September 2017 for this voluntary aided school for boys and girls aged 4 to 11 years. The variation requested is to include in the oversubscription criterion a new priority for the children of staff.
2. The school is located in the area of Birmingham City Council (the local authority) and is under the trusteeship of the Catholic Archdiocese of Birmingham (the diocese).

Jurisdiction

3. The referral to the Office of the Schools Adjudicator was made on 1 November 2016 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'.

4. After the referral was made it became apparent that the school had not notified the appropriate bodies of the proposed variation. The school subsequently provided evidence that the appropriate bodies were notified of the proposed variation on 14 November 2016. I am satisfied that the proposed variation is now within my jurisdiction.

Procedure

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

6. The documents I have considered in reaching my decision include:
- a. the school's form of referral sent by email on 1 November 2016, supporting documents and subsequent correspondence;
 - b. the determined arrangements for September 2017 and the proposed variation to those arrangements;
 - c. a copy of the local authority's composite prospectus for parents seeking admission to schools in the area in September 2017;
 - d. correspondence from the local authority regarding the variation;
 - e. a copy of the notice informing the appropriate bodies about the proposed variation;
 - f. the minutes of meetings from the school's governing body at which the proposed variation to the 2017 arrangements was discussed; and
 - g. responses to the proposed variation from the diocese on 22 and 28 November 2016, and from two local schools on 15 and 25 November 2016.

Background and Consideration of Factors

7. The school has a published admission number (PAN) of 30. The governing body determined the 2017 admission arrangements (the arrangements) on 11 November 2015 to include oversubscription criteria. At a meeting on 19 October 2016 the governing body reviewed the arrangements and decided to request a variation to insert into the determined arrangements a new criterion 2 after the priority for looked after and previously looked after baptised Catholic children and immediately before the priority for the siblings of baptised Catholic children living in the parish of Mother of God and Guardian Angels in which the school is situated. The governing body submitted the referral form requesting the variation on 1 November 2016.

8. An admission authority may request a variation to admission arrangements if there has been a major change of circumstance after determination. The governing body confirmed in the referral form of 1 November 2016 that since the 2017 arrangements were determined, there has been "*a significant change in the leadership structure of the school*" as a result of the "*phased retirement*" of the headteacher. Arrangements have been put in place to manage the phased retirement of the current headteacher "*to ensure that both leadership of the school and the achievement of pupils remain at least good.*" The governing body decided to

change the arrangements to introduce a priority in the oversubscription criteria for the children of senior leaders because, as the school stated in the email of 9 November 2016, the *“retention and recruitment of senior leaders is a particular and current issue within the diocese”* and explained further that it took five adverts before the current headteacher was appointed due to the lack of candidates for Catholic headships.

9. The school initially proposed that the new criterion would be: *“Baptised Catholic children of a member of staff employed in a key position in school for two or more years at the time the application is made, and who will have a brother or sister in school at the time of admission.”* However, this wording lacked clarity and as such, did not comply with paragraph 1.8 of the Code because the term *“member of staff employed in a key position”* had not been defined.

10. The school clarified in its email of 23 November 2016 that *“member of staff employed in a key position”* means a member of the senior management team. For clarity, the school revised and simplified the wording for the new criterion as follows:

“Baptised Catholic children of a member of staff employed in a senior management position in school for two or more years at the time the application is made.”

11. The Code at paragraph 1.39 states that *“admission authorities may give priority in their oversubscription criteria to children of staff in either or both of the following circumstances:*

- a) where the member of staff has been employed at the school for two or more years at the time at which the application for admission to the school is made, and/or*
- b) the member of staff is recruited to fill a vacant post for which there is a demonstrable skill shortage.”*

12. In its response of 22 November 2016 to the notification about the variation request, the diocese noted that the change to the school’s admission arrangements *“would, under normal circumstances, require the school to undertake a full consultation process...The consultation process, had it been conducted when the policy was originally considered...during autumn term 2015, would have given all interested parties the opportunity to comment on the proposed change.”* The diocese questioned whether introducing a change to the determined arrangements *“after the application process has commenced can be deemed as fair, clear and objective...if parties who could be affected by the change have not been given the opportunity to comment or object to the proposed change.”* The diocese said it was *“well aware and sympathetic to the problems schools face in recruiting and retaining suitable school leaders”* but added that *“we have to consider this alongside the needs of the school community...”*

13. It is the case that paragraph 3.6 of the Code states that *“once admission arrangements have been determined for a particular school year, they cannot be revised by the admission authority”* except to give effect to a mandatory requirement of the Code, admissions law, a determination by an adjudicator or to correct a misprint in the admission arrangements. However, paragraph 3.6 permits an admission authority to propose a variation where the admission authority considers

the change to be necessary in view of a major change in circumstances. The governing body, as the admission authority, does consider that there has been a major change in the school's circumstances since the 2017 arrangements were determined some 12 months ago, and has proposed the variation it considers necessary to respond to that major change.

14. The request for a variation does not require a consultation process but paragraph 3.7 of the Code requires that the school must notify the appropriate bodies of the proposed variation and to display a copy of the full varied admission arrangements on their website until they are replaced by different admission arrangements. The school has met the requirements of paragraph 3.7 the Code.

15. The diocese expressed concern that the new priority at criterion 2 would result in all the other criteria being moved down a priority, which *“could result in a child living outside of the parish area being allocated a place above the children of families living within the parish. Catholic schools were established primarily for the education of Catholic children living within the parish community that the church was built to serve... Were the variation to be permitted, the diocese would expect that the new criteria to be placed after the existing criterion 3 so that it is placed after children living within the parish boundaries.”*

16. The diocese has stated its view about the priority order it considers appropriate for the new criterion because it is concerned that baptised Catholic children living in the parish may not be admitted to the school as a result of this variation. Nevertheless, the Code makes clear at paragraph 1.9 that it is for the governing body to formulate the school's admission arrangements, and clarifies further at paragraph 1.10 that it is for the governing body to decide which criteria would be most suitable to the school according to the local circumstances. I consider that it is for the governing body to decide the priority order for the oversubscription criteria in the light of the major change in the school's circumstances. However, it may be apposite for the governing body to monitor and review the effects of this variation on a regular basis.

17. In its response of 22 November 2016, the diocese was also concerned about the wording of the new oversubscription criterion. The diocese recognised that paragraph 1.39 of the Code permits an admission authority to give priority to the children of staff but interpreted this to mean that it must apply to *“all staff and is not selective in which staff it includes.”* In its further response of 28 November 2016, the diocese acknowledged the amendment to the wording to limit the priority to the children of senior leaders but questioned whether this was appropriate because *“the Code doesn't appear to give schools any flexibility over which staff member's role is taken into account when giving priority to children of staff.”*

18. As already stated, the Code make clear that it is for the governing body to formulate the school's admission arrangements, and to decide which criteria would be most suitable to the school according to the local circumstances. I consider that it is for the governing body to decide whether or not the priority for the children of staff employed at the school is limited to some staff, as long as the wording of the priority is clear and objective as required by paragraph 1.8 of the Code, and enables staff looking at the arrangements to understand whether or not the criterion would apply to their child. The Code at paragraph 14 makes clear that *“parents should be able to*

look at a set of arrangements and understand easily how places for that school will be allocated.” The earlier wording of the proposed new criterion prioritised baptised Catholic children of “*a member of staff employed in a key position*” but as there was no definition of the term “*key position*” the criterion was neither clear nor objective, and staff looking at the arrangements would not have certainty about whether or not this criterion would apply to their child. The school has revised the wording and limited the priority to the baptised Catholic children of a member of staff employed in a senior management position in school for two or more years at the time the application is made.” I am satisfied that this priority is now clear and objective and is permitted by the Code.

19. The school received only two other comments in response to the notification and both were from other Catholic schools. The two other schools did not raise any concerns about the proposed variation but, instead, asked about matters of process as both schools were considering a similar change to their admission arrangements to introduce a priority for the children of staff.

Conclusion

20. The governing body has requested to vary the 2017 determined arrangements in response to a significant change in the leadership structure of the school. The governing body is aware of difficulties in recruiting and retaining senior leaders to schools in the diocese and the proposed variation seeks to retain the interim senior management team during the phased retirement of the current headteacher. I am satisfied that I should approve this variation.

21. However, the diocese has rightly cautioned that baptised Catholic children living in the parish may not be admitted to the school as a result of this variation. It may therefore be apposite for the governing body to monitor and review the effects of this variation on a regular basis.

Determination

22. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the variation to the admission arrangements for Guardian Angels Catholic Primary School.

23. I determine that for admissions in September 2017 the admission arrangements shall include priority for baptised Catholic children of a member of staff employed in a senior management position in the school for two or more years at the time the application is made.

Dated: 9 December 2016

Signed:

Schools Adjudicator: Ms Cecilia Galloway