



Office of  
the Schools  
Adjudicator

## Determination

**Case reference:** ADA3544 ADA3546 ADA3559 and ADA3562. St Joseph the Worker Catholic Primary School, Brentwood, Essex

**Objectors:** Four parents

**Admission authority:** The governing board of St Joseph the Worker Catholic Primary School, Brentwood Essex.

**Date of decision:** 28 August 2019

## Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objections to the admission arrangements for September 2020 determined by the governing board of St Joseph the Worker Catholic Primary School, Brentwood, Essex.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 30 September 2019.

## The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), four objections have been referred to the adjudicator by four individual parents, (the objectors), about the admission arrangements (the arrangements) for St Joseph the Worker Catholic Primary School (the school), a voluntary aided Roman Catholic, 5 to 11 primary school for September 2020. The objection is to the lack of consultation when making

changes to the arrangements and the unfairness of the resulting arrangements in terms of catchment area and siblings.

2. The local authority for the area in which the school is located is Essex. The local authority is a party to this objection. Other parties to the objection are the school and the Roman Catholic Diocese of Brentwood which is the school's religious authority.

## Jurisdiction

3. These arrangements were determined under section 88C of the Act by the school's governing board, which is the admission authority for the school. The objectors submitted their objections to these determined arrangements on 27 April 2019, 2 May 2019, 5 May 2019 and 14 May 2019 respectively. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

## Procedure

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

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

- a. a copy of the minutes of meetings of the governing board at which the arrangements were discussed and subsequently determined;
- b. a copy of the determined arrangements;
- c. the objectors' forms of objection dated 27 April, 2 May 2019, 5 May 2019 and 14 May 2019, supporting documents and subsequent correspondence;
- d. the school's response to the objections, supporting documentation and subsequent correspondence;
- e. the local authority's response to the objections;
- f. the Diocese of Brentwood's response to the objections;
- g. the local authority's composite prospectus for admissions to primary schools in September 2019;
- h. confirmation of when consultation on the arrangements last took place and details of the nature of the consultation and responses to it;
- i. a copy of the guidance on admissions provided to the school by the faith body.

## The Objection

6. The objections focus on the lack of appropriate consultation by the school when it was proposing amendments to their arrangements for admission in 2020. Objectors cite paragraphs 1.42, 1.43, 1.44, 1.45 and 15b of the Code in this respect.

7. These paragraphs from the Code are as follows;

*“1.42 When changes are proposed to admission arrangements, all admission authorities **must** consult on their admission arrangements that will apply for admission applications the following school year”*

1.43 For admission arrangements determined for entry after 2015 consultation must last for a minimum of 6 weeks and must take place between 1 October and the 31 January in the determination year.

*“1.44 Admission authorities **must** consult with:*

- a) Parents of children between the ages of two and eighteen;*
- b) Other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admissions;*
- c) All other admission authorities within the relevant area (except that primary school need not consult secondary schools);*
- d) Any adjoining neighbouring local authorities where the admission authority is the local authority; and*
- e) In the case of schools designated with a religious character, the body or person representing the religion or religious denomination.*

*1.45 For the duration of the consultation period, the admission authority **must** publish a copy of their full proposed admission arrangements (including the proposed PAN) on their website together with details of the person within the admission authority to whom comments may be sent and the areas on which comments are not sought.*

*15b Admission authorities **must** set (determine) admission arrangements annually. Where changes are proposed to admission arrangements, the admission authority **must** first publicly consult on those arrangements.”*

8. The objectors believe that the resulting determined arrangements are unfair to families because the changes have resulted in the following;

- widening the catchment area of the school to include the whole of the Deanery of Brentwood;
- removing the priority for families living in the Parish of St Joseph the Worker;

- restricting applications to families for whom the school is the closest catholic school; and
- disadvantage to siblings of children who are already at the school and whose families live in areas previously covered by the catchment area.

In addition two of the objectors express concern about the introduction of the Certificate of Catholic Practice (CPP) into the arrangements.

9. The objectors do not cite specific paragraphs of the Code concerning the fairness of the arrangements but I have considered these points with respect to paragraphs 14 and 1.8 of the Code. These paragraphs are as follows;

*“14 In drawing up their admission arrangements admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated”*

*“1.8 Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair and comply with all relevant legislation, including equalities legislation.”*

## Other Matters

10. Having considered the arrangements as a whole when the objections were received it would appear that the following matters did not conform with requirements:

- The arrangements referred to the Deanery of Brentwood and this was followed by a list of places – without a map or sufficient details such as a list of streets or postcodes to show the Deanery area this may be unclear for parents and contrary to paragraph 14 of the Code.
- The arrangements included mention of a Supplementary Information Form (SIF); as this is part of the admission arrangements it is required to have been published on the school’s website in line with paragraphs 2.4 and 15a)
- The arrangements included the sentence *“The arrangements for the part-time provision would be at the school’s discretion”*. This could be understood to mean that the provision of part-time education for a child who has not reached compulsory school age is at the school’s discretion when according to paragraph 2.16c) of the Code this is an entitlement of the parents for such children.
- Under the waiting list section of the arrangements it stated that the school will hold the waiting list until the end of the autumn term when paragraph 2.14 states that *“the admission authority **must** maintain a clear, fair and objective waiting list until at least **31 December** of each school year of admission.”* 31 December is of course invariably later than the end of the autumn term which will always fall before Christmas.

## Background

11. The school is a catholic primary school in Brentwood in Essex. It caters for five to 11 year olds and has a published admission number (PAN) of 30 for admission to reception (YR). In the last two years it has been oversubscribed and for admission in September 2019 there were 55 first preference applications. The oversubscription criteria for admission in September 2017 and 2018 are published on the school website and can be summarised as follows;

- 1) looked after children and previously looked after children from Catholic families;
- 2) baptised Catholic children, from Catholic families living in the Parish of St Joseph the Worker Catholic Church;
- 3) other baptised Catholic children who live within the Deanery of Brentwood (Billericay, Brentwood (Cathedral), Ingatestone, Ongar, Stock, Warley, Wickford);
- 4) other baptised Catholic children;
- 5) other looked after children and previously looked after children
- 6) any other applicants whose parents are in sympathy with the aims and ethos of the school.

Where the offer of places to all applicants in any of the categories listed above would lead to oversubscription, the following provisions will be applied; the attendance of a sibling at the school at the time of enrolment will have priority within each category. The tie breaker is distance from the school measured in straight line distance.

12. The arrangements for admission in September 2019 on the school's website are actually those for admission in September 2018. The local authority's composite prospectus contains the 2019 admission arrangements which are the same as those for 2017 and 2018. My assumption is that the 2018 arrangements have been published in error on the website.

13. During the autumn term 2018 the governing board discussed the admission arrangements and noted that there had been an increase in the number of children from catholic families who had been applying for places. The headteacher attended diocesan training at which the Catholic Education Service (CES) model policy was recommended by the Diocese. The governing board decided to use the CES policy as the basis for a new policy.

14. At the meeting of the governing board on 18 October 2018 they resolved to consult on the new policy *"by advising schools and Essex CC in the normal way as well as by advising parents in the school and also via the parish newsletter"*. The board resolved to consult for the required period of a minimum of six weeks to be completed by 31 January

2019. Final decisions on the arrangements were planned for the governing board meeting on 28 February 2019.

15. The consultation took place as planned; the policy was sent to the local authority and local schools. It was placed in the admission section of the school website.

16. At the meeting on 28 February 2019 the governors determined the arrangements. The oversubscription criteria for 2020 are as follows;

- 1) Catholic looked after and previously looked after children
- 2) Catholic children with a Certificate of Catholic Practice (CPP) who are resident in the Deanery of Brentwood (Billericay, Brentwood (Cathedral), Ingatestone, Ongar, Stock, Warley, Wickford) for whom St Joseph the Worker is the nearest catholic school;
- 3) Other catholic children who are resident in the Deanery of Brentwood (Billericay, Brentwood (Cathedral), Ingatestone, Ongar, Stock, Warley, Wickford) for whom St Joseph the Worker is the nearest catholic school;
- 4) Other catholic children
- 5) Other looked after and previously looked after children
- 6) Catechumens and members of an eastern Christian church
- 7) Any other children.

Within each of the categories listed above, the following provisions will be applied in the following order; a) exceptional medical, social or pastoral circumstances; and b) the attendance of a brother or sister at the school at the time of enrolment will have priority within each category. The tie breaker remains the same.

17. These arrangements change the criteria in the following ways;

- The parish of St Joseph the Worker is removed as a priority area and does not appear in the parishes named in criteria two or three. (I should say here that I have satisfied myself that the parish of St Joseph the Worker lies within the deanery of Brentwood even though it is not listed as one of the component parishes in the arrangements. I return to this important point later).
- The introduction of the CPP prioritises Catholics who fulfil the CPP criteria over those who are baptised but do not hold a CPP.
- The catchment area of the school is increased to cover the whole of the deanery area.
- The concept of 'the nearest catholic school' is introduced.

- The changes have implications for siblings.

## Consideration of Case

18. The local authority were approached for its views on the objection. The response was *“The council has no comments to make on the objection. The council had and has no comments to make on the consultation or proposed or determined arrangements.”*

19. This determination covers the admission arrangements for 2020 and does not comment on the compliance of the 2019 arrangements. This does not necessarily mean that I think the 2019 arrangements are compliant with the Code and the Law.

20. I have begun the consideration by looking at the consultation process. It must be noted here that the consequence of a finding that the consultation requirements have been breached does not necessarily lead to the arrangements being found to be in breach of the Code. Nor can I require further consultation on the arrangements for the academic year in question. It may be determined that the consultation process was in breach of the Code but, unless the published arrangements themselves are found to be in breach of the Code, then there is no requirement for the school to amend the arrangements.

21. The objectors all maintain that they were unaware of the consultation process and that they were therefore unable to make their views known to the school about the proposed arrangements. The objectors were made aware of the changes only after the arrangements had been determined and published. The formal communication to parents via email which contained the new policy was sent out on the 14 May 2019 (one day before the deadline for objections to the Office of Schools Adjudicator (OSA)).

22. When asked about the consultation process the school responded that the proposed policy was emailed to all neighbouring schools; the local authority; the diocese and *“it was posted on our website along with consultation details under the admission section”*.

23. The Code is clear about the groups of people who the school should consult under paragraph 1.44. The first of these groups is *“parents of children between the ages of two and eighteen”*.

24. The key group of people who will be affected by these changes are the parents of children at the school and prospective parents. I can see no evidence that the school consulted with parents of children under school age; this would normally be by communicating with local nurseries or children centres both by email and by placing notices in the centres.

25. The minutes of the governing board meeting on 18 October 2018 stated that parents would be informed by advertising in the school and parish newsletters. The objectors list the ways in which the school normally communicates with parents. The school holds details of parents' phone numbers, postal address and email addresses. During the consultation period the school issued a number of printed letters covering school activities; a parents'

consultation evening took place; the school newsletter was published on the 19 December 2018 which contained details about swimming, severe weather, quiz night and thrift shops. The parish newsletter was also published during this period. None of these methods of communication alerted parents to the on-going consultation on the proposed admission arrangements.

26. The school accepts that the governing board intended to communicate with parents directly through the newsletters but says that the wording of the final policy took several weeks and this *“put us up against the deadline for the consultation period to start running. Unfortunately this meant that we omitted to advertise the consultation in the school and parish newsletter which was an administrative error”*.

27. The school maintains that they took advice from the diocese and were told that the proposed arrangements needed to be published on the school website. In the response from the diocese it says that it would have been preferable had the school included a note to parents in a newsletter about the consultation as they had done in the past but the Code does not specify this as a required action.

28. I accept that the Code is not specific about how parents should be consulted but it is clear that they must be consulted in some way. The school admits that even though there are a number of ways in which the consultation could have been communicated to parents the school chose to post the consultation in the admissions section of the website. To access this, the school website needs to be launched then a section entitled key information is accessed and then another section entitled admissions. Parents would not normally access this section of the website unless they had been prompted to do so or had some reasons to believe that the arrangements were to be changed. Even if parents had accessed the website there was no indication on the launch page that there was an on-going consultation on admission arrangements. The school provided copies of screen shots showing the consultation. The objectors query the veracity of these shots and I have no way of testing this but I note that even if parents had accessed this specific page of the website the dates of the proposed admission arrangements say 2019/20 when in fact they are the arrangements for the school year 2020/21.

29. The objectors suggest that the lack of communication with parents over the consultation was in some way deliberate on the part of the school, the school refutes this and I have no way of testing this but I am of the view that the school had a number of opportunities to inform parents that the consultation was in progress and failed to do so. The proposed arrangements were posted on the admission page of the website under an incorrect title and I do not consider this sufficient to constitute effective consultation with parents. In addition, there was no attempt by the school to consult with parents of children under school age in line with the Code and I therefore uphold this element of the objection.

30. I turn now to the major changes to the arrangements which were determined by the governing board on 28 February 2019. Firstly the removal of the parish of St Joseph the Worker as a priority area and from the list of parishes in the deanery contained in criteria two and three. The school's response to this centres around the availability of a map of the



area. The minutes of the governing board meeting of the 18 October 2018 says *“there was discussion about the parish and deanery boundaries because the precise cut off locations are needed when offering places for admission and this has proved to be contentious in the past.”* Following the meeting an accurate map was requested from the diocese but, according to the school, was unavailable. The school reports that following diocesan advice the governing board decided to make the geographical area the deanery rather than the parish. This decision, according to the school, was based solely on the unavailability of a suitable map of the parish.

31. One of the objectors made a Freedom of Information (FOI) request to the school and has provided me with the detailed response. A series of email communications from and to the school in December 2018 indicate that the governing board would have preferred to retain the parish boundary. An email of 13 December from the school explains the *“predicament”*; *“we would like to give preference to catholic children with a CCP in our parish but do not think the map is robust or accurate for the job. We could revert to deanery for category 2. We know then that this would mean our parish would not look like it was given priority. I explained that it could mean that Catholics with a CCP from the parish were disadvantaged.”*

32. Another email of 17 December 2018 says *“Coincidentally I received an email from .... who is the Chancery Secretary confirming that the Dean of Brentwood does not have parish maps.”*

33. The governing board therefore decided to remove the parish from the arrangements. As part of the FOI response the school provides a map of the parish and detailed written explanations of the parish boundaries indicating precise roads and junctions. I asked the school to explain the rationale for this removal and how the arrangements have been administered in the past few years when the parish has been given high priority. The school response was that the governors had sought a digital map from the diocese but one was unavailable and that following diocesan advice the decision was made to make the geographical area the deanery rather than the parish. The school states that in previous years including admission for September 2019 and in order to confirm the child lives in the parish the governors have consulted the parish map. There is no explanation of how this method can have been used effectively for some years but that it cannot be used in the new arrangements.

34. I have tried, in vain, to find out the geographical boundaries of the deanery of Brentwood. The internet search leads me to the diocese of Brentwood which stretches from Clacton on Sea and Harwich in the east, Saffron Waldon in the north, Stratford, London in the west and Dartford in the south. This is a vast area and unlikely to be the catchment area deemed suitable by the governing board for a small primary school. The parishes listed in criteria two and three limit the area somewhat although there is no indication in the arrangements of where the geographical boundaries for these parishes are. The two criteria also do not include the St Joseph the Worker parish among those listed as making up the deanery. When I drew this to the attention of the school the response was *“St*

*Joseph the Worker should have been included in the parishes named as in the deanery in criteria two and three”.*

35. The impact of the new arrangements on families living near to the school (in the parish of St Joseph the Worker) will be that first children will be disadvantaged because the arrangements give priority for any sibling from anywhere in the deanery to take priority before distance from the school is considered. This may well impact on the ability of local Catholic families, with or without a CCP to obtain a place for a firstborn child. I consider this unreasonable for those families who live near to the school and contrary to paragraph 1.8 of the Code.

36. In addition, the removal of the parish criteria due to the unavailability of a new map, the absence of an explanation of the boundaries of the deanery and the absence of the parish in the list in criteria two and three renders this part of the arrangements unclear and contrary to paragraph 14 of the Code.

37. The diocesan guidance recommends the introduction of the CPP as follows; *“The Certificate of Catholic Practice means a certificate issued by the family’s parish priest (or the priest in charge of the church where the family attends Mass) in the form laid down by the Bishops’ Conference of England and Wales. It will be issued if the priest is satisfied that at least one Catholic parent or carer (along with the child, if he or she is over seven years old) have (except when it was impossible to do so) attended Mass on Sundays and holy days of obligation for at least five years (or, in the case of a child, since the age of seven, if shorter). It will also be issued when the practice has been continuous since being received into the Church if that occurred less than five years ago. It is expected that most Certificates will be issued on the basis of attendance. A Certificate may also be issued by the priest when attendance is interrupted by exceptional circumstances which excuse from the obligation to attend on that occasion or occasions. Further details of these circumstances can be found in the guidance issued to priests.”*

38. The governing board made the decision to include the CPP as a high priority. This provides priority for Catholics who regularly attend mass over those whose children are only baptised members of the church. It also makes the priest responsible for this decision rather than the school. Two of the objectors make the comment that their elderly priest may not be able to remember if members of the church have attended mass. A number of Catholic dioceses recommend the use of the CPP in admission arrangements. This provides the governing board with criteria which differentiates between actively and long term practicing Catholics and those who are baptised. It is a well established part of many Catholic dioceses’ guidance to schools and is clear to parents. I therefore have no concern about its introduction into the arrangements.

39. The objectors are concerned about the introduction of the concept of “the nearest catholic school” into the arrangements. I have considered the practicality of this provision in the circumstances of this school. The two nearest catholic primary schools to the school are 1.79 and 4.36 miles from the school. The next nearest catholic school is in Basildon and is 6.08 miles from the school which I consider is too far to be taken into account in relation to

the schooling of infant age children in particular in a relatively densely populated part of the country. I have therefore only considered the nearest two schools. Information from the school shows that the farthest child admitted in 2018 lived 3.2 miles from the school and in 2019 lived 0.54 miles from the school. The nearest catholic school is St Helen's school in Brentwood. It is 1.79 miles from the school and therefore children living nearer to St Helen's would, in the new arrangements, be in category four of the criteria and therefore highly unlikely to gain a place at the school. This also means that children who live nearer to St Helen's but who have a sibling at the school would also be in category four of the criteria and therefore highly unlikely to gain a place.

40. It is interesting to note that the addition of this important change to the arrangements was not discussed at either of the two meetings of the governing board which covered and then determined the arrangements (18 October 2018 and 26 February 2019). I asked the school to explain the addition and was told that the inclusion of the phrase 'nearest catholic school' was taken directly from the CES policy. The school suggested that it would *"go in some way towards giving priority to Catholics for whom our school was their nearest catholic school and therefore would be best served by attending St Joseph the Worker."*

41. The introduction of this phrase effectively removes the western side of the catchment area as this is where St Helen's primary school is situated. St Helen's admission arrangements do not contain a corresponding phrase about 'nearest Catholic school', therefore parents living nearer to St Helen's are likely to be unable to gain a place at the school but may also live too far from St Helen's to gain a place. This has the same impact on siblings of children already attending the school.

42. While the school may well wish to reduce the catchment area, I consider it unfair that no discussion has been had on the impact on those families who lived in the catchment areas until the changes and who currently have a child at the school and who may wish, quite reasonably, for siblings to attend the same school. At the very least I would have expected some transitional arrangements to be put in place for those families with children already attending the school. I consider the arrangements unreasonable for these families under paragraph 1.8 of the Code.

## **Other Matters**

43. Having considered the arrangements as a whole when the objections were received it would appear that the following matters did not conform with requirements:

- The arrangements refer to the Deanery of Brentwood and this is followed by a list of places – without a map to show the Deanery area this is unclear for parents and contrary to paragraph 14 of the Code.
- The arrangements include mention of a Supplementary Information Form (SIF); as this is part of the admission arrangements it should have been published on the school's website in line with paragraphs 2.4 and 15a). Following communication with the school this has now been rectified and the SIF appears on the website.

- The arrangements include the sentence “*The arrangements for the part-time provision would be at the school’s discretion*”. This could be understood to mean that the provision of part-time education is at the school’s discretion when according to paragraph 2.16c) of the Code this is an entitlement of the parents. This requires amendment.
- Under the waiting list section of the arrangements it states that the school will hold the waiting list until the end of the autumn term when paragraph 2.14 states that the admission authority **must** maintain a clear, fair and objective waiting list until at least **31 December** of each school year of admission. This also requires amendment.

## Summary of Findings

44. I uphold the objections to the lack of effective consultation in breach of paragraph 1.44 of the Code.

45. I conclude that the removal of the parish as a priority and the inclusion of siblings as a first priority in all oversubscription criteria will seriously disadvantage local Catholic families with a first born who wishes to apply to the school. I consider this unreasonable and contrary to paragraph 1.8 of the Code.

46. I further conclude that the removal of the parish criteria, the absence of an explanation of the boundaries of the deanery and the absence of the parish in the list in criteria two and three render this part of the arrangements unclear and contrary to paragraph 14 of the Code.

47. I am of the view that the impact of the introduction of the phrase ‘for whom St Joseph the Worker is the nearest catholic school’ to the arrangements has not been given sufficient thought by the governing board.

48. In the absence of effective consultation, I consider the arrangements unreasonable for families with children already attending the school who are now unlikely to gain a place for siblings because of the new arrangements. This is contrary to paragraph 1.8 of the Code. I note that it would be possible for the school to put transitional arrangements in place for these families if it is desirous of giving equal priority to families from a wider area.

49. I further conclude that the arrangements do not conform to the requirements of the code in terms of clarity of catchment area, entitlement of parents to part time education and the final date of the waiting list as explained in paragraph 39 above.

50. Changes to the admission arrangements can be made by the governing board of the school in order for them to conform to the Code. This is explained in paragraph 3.6 of the Code which states that “*once admission arrangements have been determined for a particular school year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of the Code, admission law, a determination of the Adjudicator or any misprint in the admission arrangements.*”

## Determination

51. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objections to the admission arrangements for September 2020 determined by the governing board of St Joseph the Worker Catholic Primary School, Brentwood, Essex.

52. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

53. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 30 September 2019.

Dated: 28 August 2019

Signed:

Schools Adjudicator: Ann Talboys