



Office of
the Schools
Adjudicator

Determination

Case reference: VAR2144

Admission authority: The Governing Board for Our Lady of Dolours Catholic Primary School, Westminster

Date of decision: 24 June 2021

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by the governing board for Our Lady of Dolours Catholic Primary School for September 2022.

I determine that the published admission number for admissions in September 2022 shall be 30.

I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the way 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.

The referral

1. The governing board for Our Lady of Dolours Catholic Primary School has referred a proposal for a variation to the admission arrangements (the arrangements) for September 2022 to the Office of the Schools Adjudicator. The school is a voluntary aided school for children aged 3 to 11 in the City of Westminster (the local authority), with a Roman Catholic religious character.

2. The proposed variation is that the published admission number (PAN) be reduced from 45 to 30.

Jurisdiction

3. The referral was made to me in accordance with section 88E of the School Standards and Framework Act 1998 (the Act) which states that: “where an admission authority (a) have in accordance with section 88C determined the admission arrangements which are to apply for a particular school year, but (b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined, the authority must [except in a case where the authority’s proposed variations fall within any description of variations prescribed for the purposes of this section] (a) refer their proposed variations to the adjudicator, and (b) notify the appropriate bodies of the proposed variations.”
4. I am satisfied that the proposed variation is within my jurisdiction.
5. I am also satisfied that it is within my jurisdiction to consider the determined arrangements in accordance with my power under section 88I of the Act as they have come to my attention and determine whether or not they conform with the requirements relating to admissions and if not in what ways they do not so conform.

Procedure

6. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
7. The information I have considered in reaching my decision includes:
 - a. the referral from the governing board dated 24 May 2021, supporting documents and further information provided at my request;
 - b. the determined arrangements for 2022 and the proposed variation to those arrangements;
 - c. a map showing the location of the school and other relevant schools;
 - d. details of the number of children admitted to the school and other local schools in recent years and the forecast demand for places; and
 - e. confirmation that the appropriate bodies have been notified of the proposed variation and the responses of the local authority and the Diocese of Westminster (the diocese), which is the religious authority for the school.

Consideration of the arrangements

8. Priority is given within each oversubscription criterion to children who have attended the school’s nursery. I considered that this may be unfair to children whose parents have

chosen not to attend the school’s nursery. Fairness in the practices and criteria used to decide the allocation of school places is a requirement of paragraph 14 of the Code.

The proposed variation

9. In the determined arrangements for admission to the school in September 2022, the PAN was set at 45, as it had been for several years. In its request for a variation to these arrangements, the governing board explains that the local authority is undertaking “a high-level review of primary school provision to agree actions/mitigations to address falling rolls, current school deficits and forecast deficits that will, if not addressed, leave schools vulnerable to closure.” By March 2021, the review had “established beyond any reasonable doubt that a permanent reduction [in the school’s PAN] is necessary to plan effectively for the future and open up to explore opportunities such as federating with other schools.” The governing board agreed with this conclusion.

10. The Code requires admission authorities to determine their admission arrangements by 28 February in the year before that to which they apply. The outcome of the local authority’s review was known shortly after this date. The governing board wishes to reduce the school’s PAN for admission in September 2022, rather than wait for another year. It says, “it is considered appropriate to submit a variation request at the earliest opportunity.”

11. Paragraph 3.6 of the Code requires that admission arrangements, once determined, may only be changed, that is varied, other than for the reasons laid out above, if there is a major change in circumstances. I will consider below whether the variation requested is justified by the change in circumstances.

12. Paragraph 3.6 of the Code also requires that the appropriate bodies in the relevant area be notified of a proposed variation. The governing board has provided me with confirmation that the appropriate bodies have been notified. I find that the appropriate procedures were followed.

Consideration of proposed variation

13. Although the school has had a PAN of 45, only the year 6 group, which is about to leave the school, contains more than 30 children. The arrangement of the classes is shown in Table One below.

Table One. Number of pupils in each class at the school (excluding Nursery)

YR	Y1	Y2	Y3	Y4	Y5	Y6	Total
20	25	14	26	21	29*	31	166

*Three year 6 children are taught in this class

The local authority reports that parents of 22 children have accepted offers of places for admission to the reception year in September 2021.

14. The school states in its variation request that,

“Informal caps are in place with agreement of the LA and the school has received falling rolls funding support”.

The local authority explained that,

“Informal capping is an agreement between a school and the LA to support the management of falling rolls. The LA coordinates admissions on behalf of the majority of its primary schools. The LA will agree and support a cap on year groups that fall below 30 for any schools that is a 1.5FE or above and has ongoing issues with reaching their PAN.

15. I would comment that this practice is, in fact, an agreement between the governing board and the local authority not to fulfil their legal duty to satisfy parental preference for a place at the school once there are below 30 children in a year group. I have grave doubts as to its legality. Refusing admission is only permitted in law on the grounds that to admit another child would “cause prejudice to the provision of efficient education, or the efficient use of resources.” The law also provides that no such prejudice can arise below the PAN for the whole of any school year which is a normal year of entry (YR in the case of this school). The admission authority is obliged to admit children to the reception year up to the PAN of 45. For other year groups, the question is whether or not prejudice will arise as noted above.

16. The school does not see such “capping” or the provision of additional funding as “long-term solutions” and believes that “The PAN needs to be reduced permanently to enable informed planning of appropriate staffing and budgeting”, providing the certainty that the school can continue to operate with one class in each year group.

17. I recognise the school’s concerns. Pupil numbers in YR and key stage 1 cannot exceed 30 in each class taught by a single qualified teacher due to the regulations relating to the size of infant classes. A reduction in the school’s PAN from 45 to 30 would enable it to plan to continue to operate with one class for children in YR in September 2022 with one teacher. If the PAN were to remain at 45 and the number of children allocated places in YR exceeded 30 by a small margin, which admittedly is unlikely based on past experience, two qualified teachers would be required for pupils in YR. This would either necessitate two YR classes to be established or, if numbers permitted, for some YR children to be in a mixed aged class with older children. As schools are funded principally on the basis of the number of pupils on roll, the former course of action could pose a severe financial challenge; the latter solution is often not favoured by schools and can be unpopular with parents. In the case of this school with a PAN of 45, reaching PAN would lead inevitably to the need for mixed age classes or to a model of organisation involving small classes of 22/23 which may well not be financially sustainable.

18. The review undertaken by the local authority confirmed that the overall demand for places in Westminster is expected to show a generally downward trend until at least 2026.

For planning purposes, the borough is divided into six areas. Our Lady of Dolours is one of eight primary schools located in the Bayswater Planning Area. The total of the PANs of these schools is currently 363; this figure would reduce to 348 if the PAN at Our Lady of Dolours were to be reduced to 30. In September 2020, 229 children were admitted to YR at the eight Bayswater Planning Area primary schools. In September 2021, 267 children are expected to be admitted; the forecast for September 2022 is also 267.

19. Clearly, more than sufficient school places would remain to meet demand in the local area if the school's PAN were to be reduced to 30 for admission in September 2022. Forecasting pupil numbers for individual schools, particularly faith schools, is more difficult, but the local authority does not expect Our Lady of Dolours to admit more than 30 pupils in 2022. In the unlikely event of the demand for places at the school exceeding 30, alternative schools are located within a short distance, including another Catholic primary school in the Bayswater Planning Area. This is important as, if a school's PAN is reduced by way of variation, admission authorities are not required to consult on keeping the same PAN in subsequent years (paragraph 1.3 of the Code) and no objections can be made to the Schools Adjudicator (paragraph 3.3 (b)).

20. Both the local authority and the diocese have expressed their support for the request to reduce the school's PAN by way of variation. I am satisfied that the change of circumstances cited by the school, that is, the outcome of the local authority review, justifies a reduction in PAN for September 2022. Prospective parents will be able to be aware of the reduced PAN in good time, as it will appear in material provided by the school and the local authority relating to the process of applying for school places. I approve the proposed variation.

Other matter

21. I turn now to the priority given to children who have attended the school's nursery. Most of the oversubscription criteria in the arrangements are faith-based. Within each criterion, first priority is given to children with "an exceptional social, medical, pastoral or other need" that can only be met at the school and that is supported by an appropriate professional. The next priority is given to siblings of children at the school, followed by attendance in the nursery at the school and, finally, priority based on distance from the school.

22. The Code does not explicitly prohibit using attendance at a pre-school setting to give priority for places. It does give specific permission in paragraph 1.39B for oversubscription criteria to include such priority for children eligible for the early years pupil premium, the pupil premium or the service premium who are in a nursery class that is part of the school. The school has not restricted the priority to children eligible for one of these premiums.

23. In response to my enquiring, the school explained the basis on which the nursery operates:

“The Nursery Operating hours are 9am till 3pm. Children are offered 30 free hours (full time) currently there is no charge for this provision. Wraparound care is not currently available for Nursery pupils.”

The school confirmed that the nursery uses the same oversubscription criteria as those in the admission arrangements and that it has not been oversubscribed for many years.

24. In response to my concern that the priority for children attending the school’s nursery might not be fair, the school commented,

“The Governing Body are in agreement that the level of priority applied to the nursery link would not disadvantage families that do not send their child to the Nursery. The priority does not form as a stand-alone category, but acts as tie-breaker within key categories...with exceptional cases and siblings taking priority. On this basis we are of the view that the positioning of the priority applied is fair and does not present as in breach the requirements of the Code.”

25. I do not share this view. Parents make a range of pre-school arrangements for their children. Some may have access to a workplace nursery that will offer the wraparound care that the school’s nursery does not; others may prefer that their child does not attend a nursery. Many parents will have made a decision based on a careful analysis of the options available to them and have reached a conclusion as to what is in the best interests of their child and their family life. The school has not provided me with a compelling reason why children living further away from the school, who are attending the nursery, should have a higher priority than those who live closer, whose parents have chosen for their child not to attend the school’s nursery, when both are to be ranked under the same oversubscription criterion. I consider the arrangements to be unfair in this respect. I recognise that it has not been necessary to apply the priority for children attending the nursery in recent years, as the school has not been oversubscribed, but the reduction in PAN to 30 that I have approved does make oversubscription a little more likely in the future and real unfairness may occur. I find the arrangements to be in breach of paragraph 14 of the Code.

Determination

26. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by the governing board for Our Lady of Dolours Catholic Primary School for September 2022.

27. I determine that the published admission number for admissions in September 2022 shall be 30.

28. I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the way set out in this determination.

29. 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.

Dated: 24 June 2021

Signed:

Schools adjudicator: Peter Goringe