

DETERMINATION

Case reference: ADA/002429

Objector: Northamptonshire County Council

Admission Authority: The Governing Body of St Gregory's Catholic Primary School until 31 May 2013 and thereafter the Governing Body of The Thomas Becket Federation of Northampton Catholic Schools

Date of decision: 14 August 2013

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body of St Gregory's Catholic Primary School for St Gregory's Catholic Primary School, Northampton, Northamptonshire.

I have also considered the arrangements in accordance with section 88I(5). I determine that the final tie-breaker arrangements and the faith-based criteria including the supplementary information form do not conform with the requirements relating to admission arrangements.

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 as quickly as possible.

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 the school admissions manager on behalf of Northamptonshire County Council, the objector, about the admission arrangements (the arrangements) for St Gregory's Catholic Primary School (the school), a voluntary aided primary school for 4– 11 year olds for September 2014. The objection is to the oversubscription criteria which give as the seventh criterion priority to children who are enrolled in St Gregory's Catholic School Nursery (the nursery).

Jurisdiction

2. These arrangements were determined under section 88C of the Act by the school's governing body which was then the admission authority for the school. The objector submitted the objection to these determined arrangements on 3 May 2013. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

3. In addition to investigating the matters raised by the objector I have also used my power under 88I(5) of the Act to review the admission arrangements as a whole and considered whether they comply with the requirements relating to admission arrangements imposed by the Act.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code). The documents I have considered in reaching my decision include:

- a. the objector's letter and form of objection dated 3 May 2013;
- b. the school's responses dated 21 May and 11 June to the objection and supporting documents;
- c. the Catholic Diocese of Northampton's (the diocese) response to the objection set out in its letter of 22 May;
- d. Northamptonshire Local Authority's, the local authority (the LA) composite prospectus for parents seeking admission to schools in the area in September 2013;
- e. confirmation of when consultation on the arrangements last took place;
- f. copies of the minutes of the meeting of the governing body at which the arrangements were determined; and
- g. a copy of the determined arrangements.

5. I have also taken account of information received during a meeting I convened on 12 July 2013 at the school and further information provided by the school following that meeting. The meeting was attended by representatives of the school, the Thomas Becket Federation of Northampton Catholic Schools (the governing body of which from 1 June 2013 became the admission authority for the school), the nursery committee and the diocese. The LA had been invited to attend and had accepted the invitation but was unable on the day to attend.

The Objection

6. The school's published admission arrangements for 2014 list as priority seven within the oversubscription criteria: "Children who do not qualify in any of the above [that is the higher priorities in the oversubscription criteria] and who are enrolled in St Gregory's Catholic School Nursery".

7. The LA objects to the inclusion of a nursery priority within the school's oversubscription criteria. In response to the question about the reasons for its objection, the LA quotes paragraph 1.8 of the Code in its entirety, together with paragraph 1.9 e. of the Code.

Other Matters

8. I have also considered the arrangements as a whole and found there are matters relating to the school's faith-based criteria and its final tie-breaker that appear not to conform with the Code.

Background

9. The governing body of the school changed its oversubscription criteria for 2013 to introduce as the seventh criterion priority for children who attend the St Gregory's Catholic Nursery. Previously, there had been no element of priority for children who attended the nursery. The governing body has determined its arrangements for 2014 and has retained the priority for children who attended the nursery as the seventh criterion.

10. On 1 June 2013, the school became part of The Thomas Becket Federation of Northampton Catholic Schools. At this point the school ceased to have its own governing body and is now governed by the federation governing body which from 1 June accordingly became the admission authority for the school.

11. The school has a published admission number (PAN) of 60. Its oversubscription criteria are summarised as follows:

- a. Children in Public Care or previously in Public Care who are baptised in the Catholic Faith
- b. Baptised Catholic children who regularly attend Mass and whose application is supported by their parish priest
- c. Baptised Catholic children who have a brother or sister in the school at the time of admission
- d. Other baptised Catholic children
- e. Other Children in Public Care or Previously in Public Care
- f. All other children who have a brother or sister in the school at the time of admission
- g. Children who do not qualify in any of the above criteria who are enrolled in St Gregory's Catholic School Nursery
- h. Children of other Christian denominations whose application is supported in writing by their Minister of religion
- i. All other children whose parents or guardians wish their child to receive a Christian education.

12. If the admission number is exceeded in any of these categories, priority is given to those who live nearest to the school.

13. The school is a 4 – 11 school. The nursery is not part of the school in the way that nursery classes are in 3 -11 schools, but it is run by the federation governing body and managed on a day to basis by a committee of governors. The nursery was set up in 2006. It is registered with Ofsted (separately from the school) on the Early Years Register and the compulsory and voluntary parts of the Childcare Register. It is based in a purpose built unit attached to the school and has its own section on the school's website.

14. The school has told me that the nursery has 48 places and in June 2013 47 children were attending. Children can attend the nursery for morning or afternoon sessions. There is no provision for children to attend all day as the nursery is not registered for full day care. Children's attendance can be funded by the state funding available from the term after their third birthday. Children are not admitted until their third birthday, but they may be given a place during the term in which they reach their third birthday. In that case, their parents are charged for the place until the end of that term, when they then become entitled to an early years place that is free to parents. However, the school has informed me that at the moment there are no such children attending.

15. The school was oversubscribed in 2012. This was the first time the school had been oversubscribed. In that year, it offered places to 25 children who qualified as practicing Catholics, 12 children who were practicing members of other Christian churches, and 23 under its criterion of children whose parents wished them to receive a Christian education. It reached its admission number among those applying under this final criterion and applied its distance tie-breaker to distinguish among them. Five families who had applied under this criterion and been refused places appealed on the grounds of having attended the nursery. No appeal was upheld.

16. The school told me at our meeting that even before it was oversubscribed in 2012 it had been considering introducing a nursery criterion. Against this background, the school consulted on including a nursery criterion and subsequent to that consultation decided to include a new nursery criterion as outlined above. The school decided that the nursery criterion should be criterion seven as it wished to recognise the existing affiliation with the school of parents who had chosen to send their children to the associated nursery while not disadvantaging any Catholics, siblings or non-Catholic looked after or previously looked after children.

17. The school informed me that it is not oversubscribed for September 2013. It has therefore not had to apply its oversubscription criteria. As the nursery oversubscription criterion was only introduced for the first time for 2013 no child has been admitted to St Gregory's on the basis of this criterion.

18. At the meeting I convened, the school told me that the LA had not raised any concerns about the nursery before making the objection to the adjudicator.

The school said that it was disappointed by this. The school said that over the years, it had frequently and willingly made changes to its arrangements on the advice of the LA.

Consideration of Factors

19. I have considered the reasons given by the LA for the objection. The Code does not address the question of priority in reception (YR) for children who have attended a particular nursery whether or not attached to a school. This does not mean such priority is fair and permitted in any given case or, on the other hand, that it is not. I have accordingly sought to test the nursery criterion used by the school against the overall principles governing admission arrangements as outlined in paragraph 14 of the Code which says, "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 easily able to understand how places for that school will be allocated." I have also taken account of the more detailed provisions of paragraphs 1.8 and 1.9e of the Code

20. St Gregory's is a Catholic school. The website for its diocese says: "Our Catholic schools are provided primarily for baptised Catholics. They should seek to be communities of faith in order to foster catechesis and evangelisation. This philosophy has important implications for governors as to whom they should admit to the school. Admission of pupils to our schools is fundamentally related to the preservation of the Catholic character of the school." This is reflected in the school's admission arrangements which provide that were the school to have 60 Catholic applicants in any particular year, they would have priority over any non-Catholic applicants.

21. The school argues that the nursery criterion is the "last in order of those who already have an allegiance to the school" and "It is entirely reasonable that parents who have already established a relationship with the school should have a better chance of a place in the school if it is oversubscribed." At the meeting, the school expanded on this point, saying that they felt that this also helped to preserve the Catholic nature of the school as they considered that people who had opted to go to a Catholic nursery would be sympathetic to the school's ethos. The diocese supports the school's approach; its view – set out in a letter of 22 May - is that: "the nursery provision criterion has a low ranking (criterion 7) and thus cannot be argued to disadvantage any particular child to a greater extent than any other criterion."

22. I am not convinced by the argument that parents who have already established a relationship with the school should have a better chance of a place than other parents who fall outside criteria 1 to 6. This would not, for example, be an acceptable approach if that relationship consisted of funding or practical support as prohibited by paragraph 1.9e of the Code. Moreover, it is not clear to me that an existing relationship demonstrated through choosing a place in the school's attached nursery is a clearer indication of sympathy to the school's ethos than applying for a place in YR.

23. There may be a number of reasons why a family which has not already established a relationship with a school might be expected to have a reasonable chance of securing a place at that school. This could include a family which had recently moved to the area or a family whose working arrangements meant that the provision offered by St Gregory's nursery could not meet their needs.

24. In addition, nursery provision is not compulsory and parents may prefer to keep their children at home. This again would mean that they would not have established a relationship with a school. I cannot see why, in any of these circumstances, it would be fair that parents should have less chance of gaining a place at the school they preferred when their children reach compulsory school age than other parents who had been able to or wished to send their children to St Gregory's nursery.

25. The question then arises as to whether the nursery criterion does in fact deprive other families of a reasonable chance of gaining a place in YR. In considering this I have taken account of the fact that the nursery criterion is seventh out of nine criteria. Places would be offered to any looked after or previously looked after child (Catholic or not); any baptised Catholic child and any sibling (Catholic or not) before attendance at the nursery would be considered in deciding who should be offered a place in the event of the school's being oversubscribed.

26. The introduction of the nursery criterion thus has no effect on Catholic families or on looked after and previously looked after children or on siblings of current pupils. However, it could affect other families who have previously been able to gain places based on being practicing members of other Christian denominations or wanting a Christian education (with priority being given to those who live closest).

27. At the meeting the school told me that a number of non-Catholic Christian families chose the school because it was a faith school as did some Muslim families. The school has provided figures which show that in 2012, 12 children were admitted under the criterion which affords priority to children from practising Christian but not Catholic families and that for 2013, three children are due to be admitted under this criterion. Muslim children would not, of course, receive any priority under this criterion and would be considered under the criterion of those who wanted a Christian education for their children with priority given to those living nearest to the school.

28. The school does not have information about the religious affiliations of families whose children attend the nursery and could not tell me how many of the children who attended might therefore gain places at the school under the school's other criteria. In addition, there were no applications for 2013 for priority solely under the nursery criterion. The school was able to tell me that for 2013, 57 children have been offered places, of whom 32 currently attend the nursery.

29. Twenty five and 45 children were admitted in 2012 and 2013 respectively on criteria that would rank higher than the nursery criterion. Depending on the degree of oversubscription it is certain that those seeking a place under the school's lowest criterion (wanting a Christian education) and possible that those seeking a place under the next lowest criterion (non-Catholic Christians) would be affected.

30. The school told me at the meeting that “in living memory” no child whose parent had applied under the non-Catholic Christian criterion had been refused a place. They believed that the introduction of the nursery criterion would not affect this group and that they and the nursery criterion children would all secure places should the school be oversubscribed again. The only group they thought would be affected would be some of those who applied under the final criterion of parents who wanted a Christian education.

31. The nursery has 48 places against the school’s PAN of 60. This means that there will always be some places available in YR for non-nursery children. I have to consider whether it is fair that the children who belong to other Christian denominations or whose parents want them to have a Christian education and who live nearer to the school should or should not have higher priority than children who have attended the nursery. In doing so, I recognise, of course, that whenever a school is oversubscribed – as St Gregory’s was in 2012 - some parents who would like a place for their child will not be able to gain one.

32. As I have already stated, the Code does not rule out some element of priority for attendance at a school’s nursery. I do not think that an element of priority of the order provided for in the school’s arrangements would always be or necessarily be unfair.

33. That said, I have other concerns about the particular arrangements currently used at St Gregory’s which I turn to now. Admission to YR at the school is governed by the law, regulations and the Code. Admission to the nursery is not regulated and the managers of nurseries are free to choose admission arrangements that would not be permitted for YR in publicly funded schools. In this case there are a number of aspects of the admission arrangements to the nursery which would not be acceptable in admission arrangements for a publicly funded school.

34. There is information about the nursery on the school’s website, but there is no information about how to apply. At the meeting, the school told me that the nursery was publicised in local Catholic churches and community facilities and by word of mouth. The school told me that there is no right of appeal if a place is refused. The school has told me that the nursery accepts children on the basis of chronology of application. The only time the nursery has been full and had to refuse a place has been for April admissions. The nursery tries to be flexible and to provide places for as many children as it can.

35. These arrangements are quite legitimate but they are very different from what is required in respect of a publicly funded school. For such a school, the arrangements must comply with the Code; they must be consulted on at least every seven years or if they are changed, they must be determined formally and they must be published. There is provision for people to make objections about them. An admission authority would not know and could not take account of the order in which applications had been received. The admission authority would know only that applications had been received by the specified date. Those refused a place would have the right of an independent appeal.

36. The Code specifically allows a junior school to give priority to children who have attended a named (publicly funded) feeder infant school. In these circumstances, the infant school's admission arrangements are themselves subject to the law and Code. I consider that it is unfair to allow any element of priority for admission to YR on the basis of attendance at nursery provision which has admission arrangements which could not be used by a publicly funded school. This remains the case even if the element of priority is low.

37. The objector specifically drew attention to paragraph 1.9e of the Code. The nursery is run under the auspices of the Federated Governing Body with a committee of governors responsible for its management. That seems to me to make the nursery an "associated organisation" in the language of the Code.

38. As outlined above, the nursery offers the provision that is funded by the state which becomes available from the beginning of the term after the term in which a child is three and – from time to time – admits children in the term in which they will be three. Where this happens, the parents pay direct to the nursery for this provision. Apart from this, there is no other provision for which parents can pay. The school told me that the funding received by the nursery does not meet its full costs and the nursery is subsidised from the school's budget.

39. I do not believe that the school's motives for including a nursery criterion are in any respect financial. It is, of course, in the school's financial interests to admit up to its PAN and it is in the nursery's interests to operate at full capacity. This has been the basis of school funding for very many years. But I accept that the reasons given by the school for introducing a nursery criterion were those they have given: that they wanted to give priority to those who had already shown an allegiance to the school through attending the nursery. So far as the state funded provision is concerned, I see very little difference between the nursery receiving funding for pupils from the state and the school receiving funding for pupils from the state.

40. However, this nursery does offer provision which is not funded by the state, albeit only a small amount and for a short period of time for any one child. A further consideration is that the school says the nursery has only had to refuse admission for a place in April. This means that those children who could not have a state funded place because their birthday was between 1 January and 31 March, but whose parents paid for their child to attend that term, not only secured a place in the nursery which they may not have done in April but also gained a priority for admission to the school. I consider that because the nursery does offer a small amount of provision for younger children for which parents can pay, giving priority in YR to children who have attended the nursery does amount to a breach of 1.9e of the Code. I want to record that, in my view, the school had no intention of breaching the Code in this way.

Other matters

41. In correspondence with the school and at the meeting I raised other matters that appeared to me not to conform to the Code. These were that:

- a. The religious practice aspect of the faith-based criterion was not clear and that the arrangements accordingly failed to conform to paragraph 1.37 of the Code;
- b. The supplementary information form (SIF) asked for information that was not necessary to apply the oversubscription criteria and thus did not conform to paragraph 2.4 of the Code;
- c. There was no final tie-breaker to decide between two applicants who could not otherwise be separated as required by paragraph 1.8 of the Code.

42. The oversubscription criteria include as the second criterion (after looked after and previously looked after children)

“Baptised Catholic children who regularly attend Mass and whose application is supported by their parish priest”

43. It is acceptable for a school with a religious character (such as St Gregory’s) to afford priority to children on the basis of a religious practice test such as attendance at Mass. However, I was concerned that “regularly attend Mass” was not defined in the admission arrangements or on the school’s SIF. It is not defined in terms of how often Mass must be attended or over what period of time in order for the attendance to be considered “regular”. Moreover, the SIF does not ask the Priest who is to sign the form whether the child regularly attends Mass. Instead, the name and address of the Priest who would support the application is requested and the Priest is then asked by the parent to sign the form.

44. I have considered whether this complies with the requirements in paragraph 1.8 that oversubscription criteria must be clear and objective. The school in its letter of 21 May argues that: “The precepts of the Catholic Church expect Mass attendance every Sunday and Holy Day unless unavoidably prevented. However they do not require that attendance is in the same church every week. While the word “regularly” is not defined in the admission criteria, Catholics would understand the implication of this, and the priest signing the form would expect to know the family as weekly worshippers. The signing of the priest is taken to be evidence that the family are practicing Catholics.” I note in this regard that the diocese defines on its website “practice” as “weekly attendance at Mass”. I take note of the school’s comments, but I do not think that “regularly” is an adequate definition of the Mass attendance requirements and I do not therefore think that this criterion is clear as required by paragraph 14 of the Code or that parents would be able easily to understand how any faith-based criteria will be reasonably satisfied as required by paragraph 1.37 of the Code.

45. The school also gives some priority to “children of other Christian denominations whose application is supported in writing by their Minister of religion”. The same SIF is used with the Minister expected to sign the form to confirm support for the application. However, the criterion which relates to these children does not include any reference to religious practice.

46. The oversubscription criterion for practising Catholics in its reference to “regularly attends mass” is not as clear as it needs to be. In relation to children of

other Christian denominations, the arrangements are less clear still. There is nothing in the arrangements or on the SIF to guide the Minister of Religion as to the basis on which he or she is to decide whether or not the application should be supported. This means that the arrangements cannot be objective (each Minister will simply have to form his or her own opinion on whether to support the application) and certainly not clear or easy for parents to understand. This contrasts with the case for Catholic Priests who will decide whether or not to support the application on the basis of whether the test of regular attendance at Mass is met or not (albeit that I consider this itself not to be adequately clear).

47. I have concluded that the faith-based criteria and SIF which is part of the admission arrangements are not clear and do not conform to paragraphs 14 or 1.37 of the Code. Both must be revised. The representatives of the federation governing body at my meeting accepted these points at the meeting and the diocese has offered to help draw up a new criterion and SIF.

48. The SIF also asks whether the child has made his or her first Holy Communion and for details of previously attended school/nursery.

49. The Code is clear at paragraph 2.4 that admission authorities “**must** only use supplementary forms that request additional information where it has a direct bearing on decisions about oversubscription criteria or for of the purpose of selection by aptitude or ability.”

50. The school in its letter of 21 May accepts that the question of First Holy Communion is not relevant to children applying for YR, as children would normally be in year 3 when they receive Holy Communion for the first time. The school goes on to say that the same form is used for in-year admissions and that while the question of First Holy Communion has no bearing on whether a child is offered a place it is useful information in terms of the pastoral care of children in school.

51. The school may find this information helpful. However, that is not a justification for including a request for it on the SIF contrary to the provisions of paragraph 2.4 of the Code. It is information which can properly be sought, if necessary, once a child has been admitted to the school.

52. Similarly, while admission arrangements for the school would have required information about attendance at St Gregory’s Catholic Nursery, they do not require information about other schools or nurseries previously attended.

53. The SIF is part of the admission arrangements and does not conform with the requirements of the Code. The representative of the federation governing body agreed at the meeting that it would amend the SIF. The diocese agreed to provide help with this.

54. I have considered the tie-breaker arrangements which give priority to the child who lives closest to the school. I am conscious that this approach is common in Northamptonshire. However, as the tie-breaker would not be able to separate two applicants who lived the same distance from the school or the same distance from the nearest alternative school, it does not meet the requirements of paragraph 1.8 of the Code. A final way of separating such applicants, for example, by random allocation must be included. The federation governing body

has already agreed to amend the tie-breaker.

Conclusion

55. St Gregory's is a school undergoing significant change with the advent of the federation of which it is a member. The school and the federation have been quick to provide me with information and clearly put a lot of thought into our meeting.

56. For the reasons given above, I do not consider that the current arrangements are fair as required by paragraphs 14 and 1.8 of the Code in relation to giving priority for admission to the school by attending the nursery. I consider that paragraph 1.9e of the Code is breached for the reasons given above. I consider that the faith-based criteria and the SIF used do not conform to the requirements of paragraphs 14, 1.37 and 2.4 of the Code in the ways described above.

57. It will be for the federation governing body to make the necessary changes to the arrangements.

Determination

58. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body of St Gregory's Catholic Primary School for St Gregory's Catholic Primary School, Northampton, Northamptonshire.

59. I have also considered the arrangements in accordance with section 88I(5). I determine that the final tie-breaker arrangements and the faith-based criteria including the supplementary information form do not conform with the requirements relating to admission arrangements.

60. 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 as quickly as possible.

Dated: 14 August 2013

Signed:

Schools Adjudicator: Ms Shan Scott