



DETERMINATION

Case reference:	ADA2854
Objector:	A parent
Admission Authority:	The Governing Body of St Joseph's Catholic Primary School, Epsom, Surrey
Date of decision:	3 September 2015

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing body for St Joseph's Catholic Primary School, Epsom, Surrey, for admission to the school in September 2016.

I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements 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 this determination.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by a member of the public, the objector, about the admission arrangements (the arrangements) for St Joseph's Catholic Primary School, a voluntary-aided (VA) school for pupils aged 4 – 11 years for September 2016. The objection is to some aspects of the school's faith-based oversubscription criteria and to the fact that the parish map is not published on the school's website.

Jurisdiction

2. These arrangements were determined under section 88C of the Act by the school's governing body, which is the admission authority for the school, on 2 February 2015. The objector submitted the objection to these determined arrangements on 19 April 2015. The objector wishes to remain anonymous. Regulation 24 of the School Admissions

(Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations), provides that an objection may only be made where an objector provides his or her name and address to the adjudicator and the objector has done so in this case.

3. Regulation 22 of the Regulations provides that where the adjudicator has determined an objection to the admission arrangements of a school, no objection may be referred to the adjudicator raising the same or substantially the same issues in relation to those arrangements within two years. The school's arrangements for 2015 were the subject of determination ADA2602. I am satisfied that the matters which are raised in this objection are substantially different from those dealt with in ADA2602. However, some of the matters raised in the objection concern matters which are not within my jurisdiction. These are: the circumstances in which a particular individual child was allocated a place at the school; whether or not priests in completing the relevant section of the school's supplementary information form (SIF) did or did not take account of matters not in the arrangements; and the arrangements made in individual churches so that priests know who has attended Mass (often referred to as registration schemes or signing in records). As these matters are not within my jurisdiction I have not considered them further. I refer to them in this determination only where they have been cited by the objector in relation to other aspects of the objection. I am satisfied that in other regards the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.
4. In addition to investigating the matters raised in the objection, I have also used my powers under Section 88I of the Act to consider the arrangements as a whole and whether or not they comply with the requirements relating to admissions.

Procedure

5. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
6. The documents I have considered in reaching my decision include:
 - a. the objector's email of objection dated 19 April 2015 and subsequent comments made between May and July 2015;
 - b. the school's response to the objection and supporting documents dated 30 April 2015 and subsequent comments made between May and July 2015;

- c. the response of 29 April 2015 of Surrey County Council which is the local authority (LA) for the area to the objection and supporting documents and subsequent comments;
- d. the response of 30 April 2015 of the Catholic Diocese of Arundel and Brighton (the diocese), which is the school's religious authority to the objection, and supporting documents including the guidance issued by the diocese to its schools and subsequent comments made between May and July 2015;
- e. the LA's composite prospectus for parents seeking admission to schools in the area in September 2015;
- f. confirmation of when consultation on the arrangements last took place;
- g. copies of the minutes of the meeting of the governing body on 2 February 2015 at which the arrangements were determined; and
- h. a copy of the determined arrangements.

The Objection

- 7. The objection is concerned with a number of aspects of the school's faith-based admission arrangements and these are outlined below:
 - a. the element of priority given in the school's oversubscription criteria to baptised Catholic children who attend Mass and who live outside the parish of St Joseph's;
 - b. whether the arrangements follow the diocesan guidance for residency;
 - c. the amount of priority given to siblings;
 - d. clarity or lack of clarity as to whether the child as well as a parent is required to attend Mass to gain priority under the relevant criteria;
 - e. the availability of a map of the parish on the school's website.

Other Matters

- 8. I also reviewed the arrangements as a whole and considered that certain aspects may not conform with the Code. These matters were raised with the school and they were:
 - a. that consultation on the arrangements may not have met the requirement of paragraphs 1.44a of the Code;
 - b. that the provision in the arrangements for assessing whether or not applicants meet the school's faith-based oversubscription criteria on the basis of attendance at Mass may not be clear as

required by paragraphs 1.4 and 1.8 of the Code and may not meet the requirement of paragraph 1.37 that “*admission authorities must ensure that parents can easily understand how faith-based criteria will be reasonably satisfied*”. This is because there was no indication as to the period of time for which attendance had to be sustained;

- c. the SIF appeared to ask for information not needed to apply the oversubscription criteria and hence may not conform with paragraph 2.4 of the Code; and
- d. that the arrangements may not contain a final tie-breaker as required by paragraph 1.8 of the Code capable of deciding between two or more applicants who lived the same distance from the school and were equally eligible for the final available place.

Background

9. The school is a Catholic school designated as such by the Secretary of State for Education in accordance with section 69(3) of the Act. It has a published admission number (PAN) of 60 for Reception. The oversubscription criteria which apply for 2016 differ from those which applied in 2015 and previous years. They were changed in response to the adjudicator’s determination ADA2602. The school consulted on the proposed admission arrangements from 18 December 2014 to 13 February 2015. This meets the requirements of the Regulations and paragraph 1.43 of the Code as to timing and duration of consultation.
10. The oversubscription criteria for 2016 can be summarised as follows:
 1. Baptised Catholic looked after or previously looked after children.
 2. Baptised Catholic children with a sibling at the school at the time of admission whose family practise their faith.
 3. Baptised Catholic children resident in St Joseph’s Parish, Epsom whose family practise their faith.
 4. Baptised Catholic children resident outside St Joseph’s Parish, Epsom whose family practise their faith.
 5. Other baptised Catholic children resident in St Joseph’s Parish, Epsom.
 6. Other baptised Catholic children.
 7. Other looked after or previously looked after children.
 8. Other children with a sibling at the school at the time of admission.
 9. Children who are members of Eastern Orthodox churches.

10. Children who are members of other Christian denominations.
 11. Children who are members of other faiths.
 12. Any other children.
11. The arrangements also specify what is to happen if the PAN is reached and exceeded within any one of the oversubscription criteria. First consideration within any category will be given to whether the child has an exceptional social or medical need to attend the school. For criteria 2,3 or 4 priority will be based on the frequency of attendance at Mass on Sundays or Saturday evenings and for criteria 9,10 or 11 priority will be based on frequency of attendance at the relevant religious services. For other criteria and if necessary to distinguish between applicants with identical levels of attendance at Mass or services, priority will be based on distance from home to the school. There is a final tie-breaker to be used if two children live in the same block of flats but no final tie breaker if two children live in houses which are the same distance from the school. The arrangements also explain that children with a statement of Special Educational Needs (SEN) or an Education, Health and Care Plan (EHCP) will be admitted to the school.
12. The school is regularly oversubscribed and so has to apply its oversubscription criteria. It is also regularly oversubscribed with Catholic children and in September 2014 and September 2015 was not able to admit all baptised Catholic children who sought a place.

Consideration of Factors and Other Matters

13. I have considered carefully each aspect of the objection and the other matters I identified.
14. I deal first with the question of consultation. I have already stated that when it consulted on its admission arrangements for 2016, the school met the requirements as to the duration and timing of consultation. Paragraph 1.44 of the Code sets out the bodies which must be consulted. I am satisfied that the school consulted those listed at paragraph 1.44b to 1.44f inclusive. However, paragraph 1.44a states that admission authorities **must** consult with “*parents of children between the ages of two and eighteen*”. The school has explained that in relation to this requirement it:
- a. posted the proposed arrangements on its website;
 - b. consulted the adjacent nursery;
 - c. set out the proposed arrangements in its school newsletter; and
 - d. displayed the school newsletter on the parish noticeboard where it could be seen by visitors, including community groups who use the church and who might not be parishioners.

15. The objector argues that arrangements were not actually on the parish noticeboard during the consultation period. This is not a matter I can pronounce on as – unsurprisingly – there is no evidence either way. The diocese considers that the school’s actions met the requirements of the Code in relation to consultation with parents. It draws attention to the fact that earlier versions of the Code specified that an advertisement about proposed changes to admission arrangements had to be placed in a local newspaper but that this requirement was removed from the version of the Code published in 2012 and revised in 2014. The diocese also notes that *“some suggestions have been made that schools should put their draft arrangements in doctor’s surgeries or supermarkets. However this is totally unworkable as with multiple pages and a significant number of schools, these organisations are not going to have the facility (or will) to display a myriad of policies”*.
16. The school has made some attempt to consult parents, in particular, current parents and those who use the adjacent nursery. However, I do not consider that it has done enough to fulfil the requirements of the Code. The fact that admission authorities do not have to advertise proposed changes in local newspapers does not prevent them from doing so. Similarly, the school could have provided leaflets or flyers to local service providers (such as other nurseries, health centres and shops) outlining the proposed changes and giving the link to the school’s website where the full proposals could be seen. That said, the fact that the school did not fulfil one aspect of the requirement relating to consultation does not affect the status of the arrangements as determined arrangements or my jurisdiction to consider the objection.
17. I turn now to the question of the priority given in the oversubscription criteria to practicing Catholics who live outside the parish together with the question of whether the school has had regard to the diocesan guidance. The objector refers to whether the school has “followed” the guidance. The requirement of the Code is actually that the school should have regard to the guidance and that is accordingly the test I have applied, although, as I shall show below, the school’s arrangements do not depart from the guidance and it has thus followed the guidance in this regard.
18. The objector notes that the element of priority given in the school’s oversubscription criteria to baptised Catholic children who attend mass and who live outside the parish of St Joseph’s means that baptised Catholics who live in the parish but who do not attend Mass will have less chance of securing a place. The objector argues that this is unfair to families who live in the parish but are unable to attend Mass frequently or at all, possibly because they have caring responsibilities, are single parent families, work shifts or some combination thereof. The objector believes that the arrangements could favour wealthier and more mobile families who live outside the parish but worship more regularly than some Catholic families who live in the parish and who might be poorer.
19. The school is entitled by virtue of paragraph 1.36 of the Code to have

faith-based oversubscription criteria. In doing so, it must have regard by virtue of paragraph 1.38 to any guidance published by its religious authority – the diocese – when constructing faith-based admission arrangements. The guidance published by the diocese says in the section addressed to governors:

“In terms of guidance on how membership or practice of the faith is to be demonstrated, in the Diocese of Arundel and Brighton the definition of membership of the Catholic church ...is Baptism or reception into the Church. The understanding of Catholic practice for the purpose of admission to schools in the Diocese in membership of the Catholic Church and attendance at Sunday Mass (which includes any Saturday evening Vigil Mass).”

Where schools are oversubscribed with Catholic children, governing bodies may, for reasons of justice, give a higher priority to children from families who are able to demonstrate their commitment to the faith by their frequency of attendance at Sunday Mass.”

20. As noted above, the school is indeed “oversubscribed with Catholic children” and it does – as contemplated by the diocesan guidance - give an element of priority for Catholic children whose families practise their faith by attending Mass. It has chosen to include an element of priority for practising families who live outside the parish. This is the lowest of the categories concerned with children from practising Catholic families. The diocese has made clear in its initial response to the objection and its subsequent comments that it is fully content with the school’s arrangements. It draws attention to the fact that a family living in the parish of St Joseph’s who attended Mass but did so less than once a month would still have greater priority than a family living outside the parish who attended weekly. It would only be those families who lived in the parish but who did not attend Mass at all who would have lower priority. The diocese also drew my attention to the fact that the requirements for Mass attendance could be met at any Catholic church and at any one of the Masses held on Saturday evening or during the course of Sunday and that in its view this afforded scope for families in different circumstances to attend a Mass which would count for the purposes of meeting the school’s oversubscription criteria.
21. The objector also argues that the school’s arrangements do not follow the diocesan guidance for residency. The relevant section of the guidance says that schools can “*consider a criterion of residence in named parishes, perhaps as an alternative to one of proximity to the school.*” It also draws attention to the importance of schools and parishes working together so that the interests of Catholic children who live in parishes which do not have Catholic schools are protected and emphasises that worship in a particular parish (as distinct from residence) should not be used as a basis for priority. The diocese considers that the school has followed the guidance in this regard. The objector has also cited one of the model oversubscription criteria set out in the guidance which does not include any element of priority for attendance at Mass. The diocese’s response to this argument is that

the model is simply that: a model, and is not intended to be prescriptive.

22. The objector clearly believes that all baptised Catholics resident in the parish should have priority over any baptised Catholics resident outside the parish regardless of practice and has argued this point at considerable length in various submissions on this case. The Code allows schools with a religious character to have faith-based oversubscription criteria. There is nothing in the Code to say that schools must give greater priority to members of a faith or denomination who live in a particular locality but do not practise their faith than to members who practise their faith but live elsewhere. My reading of the diocesan guidance does not suggest to me that it expects schools always to give priority to those who live in the parish where the school is located irrespective of levels of practice. The diocese in its comments has said that it considers that the school has followed its guidance and that it supports the school's approach.
23. It is for the school to formulate its admission arrangements in accordance with the Code and in the light of guidance from its diocese. The arrangements in relation to the relative priority given to those who live inside and those who live outside the parish are objective and clear. I have considered also whether they are fair. The highest level of priority based on Mass attendance is gained by those living in the parish and attending Mass "*weekly or at least three times a month*" and there are several options as to the services to be attended and attendance can be at any Catholic church. In addition, all those baptised Catholics who live in the parish and whose parent or carer attends Mass at all, even if this is less than once a month, have a higher priority than those living outside the parish. I consider that the arrangements are in this respect fair. I do not uphold this aspect of the objection. I deal below with the separate matter of the length of time for which attendance must be sustained.
24. The objector has complained about the changes made to the priority given to siblings of pupils attending the school. For admission in 2015, the highest priority after baptised Catholic looked after and previously looked after children, was given to "*Baptised Catholic children with a sibling at the school*". For admission in 2016, this level of priority is restricted to baptised Catholic siblings where the family practise their faith. Because of the way the school's arrangements work, the only children who have lost priority as a result of this change are baptised Catholics who do not attend Mass at all. As explained above, it is for the school to determine its arrangements and if it wishes to make changes to its oversubscription criteria, it is free to do so provided it follows the process set out in the Code and provided the new arrangements conform with the Code. I have already made clear that the school's consultation did not fully meet the requirement of the Code. However, the revised arrangements are clear and objective. Attendance at Mass, even if this takes place less than once a month, is all this is required for a sibling of an existing pupil to gain a high level of priority and I consider that the arrangements are in this respect are

fair. I do not uphold this aspect of the objection.

25. The objector is concerned that the arrangements are not clear about whether a parent or carer on the one hand or a parent or carer and the child must attend Mass in order to gain the relevant priority. The phrase used in the oversubscription criteria when referring to Mass attendance is “whose family practise their faith”. Note f) to the oversubscription criteria says: “*Where the admission arrangements refer to the family’s attendance at Mass, this is based on the parent/carer’s attendance. It is sufficient for just one parent/carer to attend.*” The only question about practice addressed to the Priest on the SIF is “*How often does the parent/carer attend Mass?*” which is followed by a series of boxes corresponding to different frequencies of attendance.
26. In support of this aspect of the objection, the objector quoted from the parish newsletter for St Joseph’s which referred to the “*child’s signing in records*” which the objector believes indicates that priests at that church will, in fact, only take account of Masses attended by both parent/carer and child when completing the relevant section of the SIF. As noted above, my jurisdiction is limited to the arrangements themselves; it does not extend to whether or not those completing SIFs answer accurately the questions posed or not.
27. In this case, the oversubscription criteria are properly reflected in the questions on the SIF. The school has noted what it refers to as the “mismatch” between the statement in the parish newsletter and the arrangements. It adds that following discussions with the parish priest, the newsletter will make clear that it is only one parent who is required to attend (and thus sign in so that the priest knows who has attended and thus can complete SIFs accurately). I do not uphold this aspect of the objection. Given the comments made by the objector, and the reference in the newsletter to “child’s signing in” the school will need to assure itself that its arrangements are being properly applied.
28. I turn now to the aspect of the objection which said that the parish map was difficult to obtain and should be on the school’s website. When I reviewed the arrangements in April 2015 the map was not on the website. The only reference to the map in the arrangements stated: “*The relevant parish map can be viewed at the school by arrangement*”. The arrangements do not contain any alternative explanation of the area which comprises the parish, such as a list of roads or description of its boundaries. The school in its letter of 30 April 2015 said “*the parish map is not difficult to obtain. There are copies held at the school for families who enquire; the parish have maps; the Local Authority hold copies. An electronic version is under construction and just a short time away from being launched on the website*”. The arrangements include significant elements of priority for those who live in the parish of St Joseph’s and I have concluded above that this is in conformity with the Code. However, it is a core requirement of admission arrangements that they are clear (paragraphs 14 and 1.8 of the Code). In addition, paragraph 14 of the Code says that parents should be able to look at a set of arrangements and understand easily how places for that school

will be allocated. In this case, that means a parent needs to know whether he or she lives in the parish of St Joseph's. Parents should not have to visit a school or make enquiries of the parish or the LA in order to understand a school's admission arrangements. The arrangements as they stand do not explain in any way the area covered by the parish and are not clear. I note that at the time of completing this determination there was no map or equivalent explanation of the parish on the school's website despite what was said on 30 April 2015 and I uphold this aspect of the objection.

29. When I reviewed the arrangements, I noticed that, while they set out clearly matters relating to frequency of Mass attendance, they were silent on the question of how long attendance had to be sustained. For example, whether it was enough to have attended Mass for, say, three months or six months or a year. I was concerned that in the absence of such information parents would not know what the requirement was, if any, and this meant that the arrangements might not be clear as required by paragraphs 14 and 1.8 of the Code and might not meet the requirement in paragraph 1.37 that admission authorities "*must ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied*".
30. The LA in one of its submissions stated: "*As the school does not stipulate an expected duration of time that practise should have been sustained, the arrangements do not appear to be objective. I can also see that parents may not be able to understand easily how places for the school will be allocated nor how the faith-based criteria will be reasonably satisfied*". The school has said that it "*does not currently put a time limit on how long practice must have taken place in the admission arrangements. However, as a result of reflecting on the arrangements, prompted by the adjudicator's questions, the Governors readily acknowledge that there is a mismatch in the requirements of the school's admission arrangements and the practice of signing in at parish level. The Governors are clear in their commitment to eliminate any misconceptions that may exist about the admissions arrangements for the school.*"
31. The responsibility for the admission arrangements rests with the governing body of the school as the admission authority. Its implicit recognition that the arrangements do not currently comply with the requirements of the Code because of the lack of clarity as to the period for which Mass attendance is sustained is welcome. Because the arrangements do not make clear how long a parent or carer must have attended Mass, the arrangements are not clear or objective and hence are not fair. They also do not meet the requirements of paragraph 1.37 of the Code as it is not possible for a parent to know whether his or her practice would secure priority under the school's faith-based criteria or not. The school must revise its arrangements within two months of the date of this determination.
32. When I reviewed the SIF, I noted that it asked which parish applicants live in. The arrangements give priority for those who live in the parish of

St Joseph and it is accordingly reasonable to ask if families live in that parish. However, I could not see that it was necessary to ask which parish those who lived outside St Joseph's resided in. When I raised this point with the school, it responded by saying that it did not need this information in relation to non-Catholic applicants but did for Catholic applicants. The diocese said that "*a number of the oversubscription criteria include reference to the parish where the child is resident. It therefore seems reasonable to ask the applicant in which parish they resident [sic] as this question is necessary in order to apply the oversubscription criteria*". I simply do not accept these arguments. A child either lives in the parish of St Joseph's or outside it. If the child lives outside St Joseph, the parish of residence is immaterial for the purpose of applying the admission arrangements. Paragraph 2.4 of the Code makes clear that schools can only use SIFs to ask for information which is necessary to apply admission arrangements. By asking for information about the parish lived in by those who do not live in St Joseph's the SIF is seeking information not necessary to apply the admission arrangements and so does not conform with paragraph 2.4 of the Code. The arrangements must be revised within two months of this determination to remove the question about residence in parishes other than St Joseph's.

33. Finally, I address the question of the tie-break used in the arrangements. Paragraph 1.8 of the Code states that "*admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated*". As noted above, the school's arrangements provide for random allocation to be used to separate two applicants who live in the same block of flats and qualify equally for the final available place. However, the arrangements do not say what should happen should two applicants tie for the final available place and live in houses which are the same distance from the school. While this may be likely to happen only very rarely, it is a requirement of the Code for there to be final tie-breaker. The school has taken advice from the diocese on this point which has proposed that random allocation should be used if necessary to separate two final applicants who live equidistant from the school. The school's arrangements do not currently meet the requirement of paragraph 1.8 to include a final tie-break capable of separating two final applicants in all cases and must be amended within two months.

Conclusion

34. For the reasons given in this determination, I have not upheld most aspects of the objection. I have upheld the aspect relating to the availability of the parish map. I have also noted that some aspects of the objection were outside my jurisdiction. I have found that in some respects the arrangements do not conform with the requirements relating to admissions and determined that the arrangements must be revised.

Determination

35. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing body for St Joseph's Catholic Primary School, Epsom, Surrey, for admission to the school in September 2016.
36. I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways set out in this determination.
37. 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 this determination.

Dated: 3 September 2015

Signed:

Schools Adjudicator: Shan Scott