



Office of
the Schools
Adjudicator

Determination

Case reference: VAR2391

Admission authority: The governing board for St Bernadette's Catholic Junior School, Lambeth.

Date of decision: 18 January 2024

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 of St Bernadette's Catholic Junior School for St Bernadette's Catholic Junior School for September 2024.

I determine that the published admission number 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 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 states that an admission authority must, where necessary, revise their admission arrangements to give effect to the Schools Adjudicator's decision within two months of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative timescale is specified by the Schools Adjudicator. In this case, the applicable date by which the arrangements must be revised is 28 February 2024.

The referral

1. The governing board of St Bernadette's Catholic Junior School (the governing board) has referred a proposal for a variation to the admission arrangements for September 2024 (the arrangements) for St Bernadette's Catholic Junior School (the school, St Bernadette's) to the adjudicator. The school is a voluntary aided school for children aged seven to eleven in Lambeth with a Catholic religious character. The Catholic Archdiocese of Southwark (the diocese) is the religious authority for the school.

2. The proposed variation is that the published admission number (PAN) be reduced from 60 to 30.

Jurisdiction and procedure

3. The referral was made to me in accordance with section 88E of the School Standards and Framework Act 1998 (the Act) which deals with variations to determined arrangements. Paragraphs 3.6 and 3.7 of the School Admissions Code (the Code) say (in so far as relevant here):

“3.6 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 this Code, admissions law, a determination of the Adjudicator or any misprint in the admission arrangements. Admission authorities may propose other variations where they consider such changes to be necessary in view of a major change in circumstances. Such proposals **must** be referred to the Schools Adjudicator for approval, and the appropriate bodies notified. Where the local authority is the admission authority for a community or voluntary controlled school, it **must** consult the governing body of the school before making any reference.

3.7 Admission authorities **must** notify the appropriate bodies of all variations”.

4. The governing board has informed me that it requested Lambeth Council (the local authority) to notify the appropriate bodies on the school’s behalf. This is said to be the procedure operating locally. I have received confirmation from the local authority that the appropriate bodies have been notified. The school has confirmed that both the local authority and the diocese have been consulted on the proposed variation. I find that the appropriate procedures were followed, and I am satisfied that the proposed variation is within my jurisdiction. 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 to determine whether or not they conform with the requirements relating to admissions and, if not, in what ways they do not so conform.

5. In considering these matters I have had regard to all relevant legislation, and the Code.

6. The information I have considered in reaching my decision includes:

- a. the referral from the governing board dated 13 December 2023, supporting documents and further information provided at my request;
- b. the determined arrangements for 2024 and the proposed variation to those arrangements;
- c. comments on the proposed variation from the local authority and the diocese;

- d. a map showing the location of the school and other relevant schools;
- e. a map showing the locations of the home addresses of pupils attending the school;
- f. Adjudicator determination VAR2227 for St Bede's Catholic Infant and Nursery School dated May 2023; and
- g. information available on the websites of the local authority, the school, the Department for Education and Get Information About Schools (GIAS).

The proposed variation

7. The variation proposed is that the PAN for admissions in September 2024 be reduced from 60 to 30.

8. Paragraph 3.6 of the Code (as above) requires that admission arrangements, once determined, may only be revised, that is changed or varied, if there is a major change of circumstance or certain other limited and specified circumstances. It is for the admission authority to determine that there has been a major change of circumstances. My function is to consider whether the variation requested is justified by the change in circumstances, which I will now proceed to do.

Consideration of proposed variation

9. The PAN reduction is proposed by the school as a result of a decline in the number of applications. The school has links with a local infant school (St Bede's Catholic Infant and Nursery School, St Bede's). Most children transfer from St Bede's to St Bernadette's at the beginning of year 3. The September 2022 PAN for St Bede's was reduced from 60 to 30 with the approval of the schools adjudicator in May 2022 (VAR2227). The reduced PAN for St Bede's would not be due to impact on St Bernadette's until September 2025; however, I am informed that there will be only one Year 2 class transferring from St Bede's to St Bernadette's in September 2024. The number of places allocated at St Bernadette's has been below 60 since September 2021 and was below 30 in September 2023. The local authority has forecast a continuing decline in applications, with the number of admissions to the school anticipated to be 28.3 in 2024/25, 24.8 in 2025/26, 16 in 2026/27 and 23.5 in 2027/28.

10. I was originally told by the school that the reason for the PAN reduction was "so that only one teacher and one teaching assistant will need to be employed for each year group". The school said "If the proposed variation is not granted the effect would be that we could potentially have classes over the legal limit which will then mean that the school will have to employ teaching and support staff without having the funding to support the costs, which will then have a detrimental effect on the school budget, which is already running at a deficit".

11. I was concerned that the school's reasons for seeking the PAN reduction appeared to relate to the requirements of The School Admissions (Infant Class Sizes) (England) Regulations 2012 which say that no infant class may contain more than 30 pupils while an ordinary teaching session is conducted by a single school teacher. I therefore asked the case manager to write to the school explaining that there is no legal requirement for junior schools to have 30 or fewer children in a class. I wanted to ensure that the school understood this, and to check whether the governing board considered that a variation was still needed in light of this information.

12. The school replied saying: "We understand that there is no legal requirement to have only 30 children in each junior class, and as regards the number of children in each Junior class we have always had places for 32 children when we were full, but unfortunately over the past two years the roll has fallen below 30 in each year group. Currently we have less than 30 children in each of our year groups except for Year 4. We also have a high percentage of SEND children on the register needing additional support.

In September 2024 we will only have one class for each of the year groups from Y3 to Y5 (less than 30 children in each class) and two smaller classes in Year 6 (currently 24 in each class)

Reducing our PAN to 1FE would be reflective of the current roll we have going forward".

13. The local authority has provided tables containing relevant data about the PANs for each of the primary and junior schools in the Planning Area and the number of admissions (actual and forecast) from September 2021 to September 2027. Rather than copy and paste these data into the determination, I am attaching the information as Appendices 1 and 2. The local authority has confirmed that, if the PAN reduction for the school is approved:

- there will be sufficient Year 3 places available in the Planning Area in September 2024;
- no parents will be refused a place for their child during the school year beginning September 2024 as a result of the school being over the PAN of 30;
- accordingly, there is no likelihood of parents and children having to make longer journeys to school or any adverse environment impact.

It is not anticipated that there will be any new homes built in the local area before September 2025, such that might increase the number of applications to the school.

14. The diocese is said to be fully supportive of the proposed PAN reduction. The intention in the longer term is for St Bede's and St Bernadette's to become a single primary school. The diocese said:

“The decline in pupil numbers is one of the biggest challenges facing us and it is more acute in certain parts of the diocese. The consolidation of St Bede’s and St Bernadette’s is part of our response to this issue. Doing this will offer a number of benefits, without negatively impacting on parental choice. Financially, it will assist the school, both utility costs and building costs will be reduced. It should also produce educational benefits for the children, as all staff will be in one building. The headteacher would not have to divide time across two sites and could use her time more effectively. We feel the decision to consolidate would produce benefits for parents. They would not have to consider the logistics of possibly having siblings across two sites or the children having to adjust to a new site at the end of Key Stage 1. Being an all-through primary school should ensure stability for the school as children would seamlessly move from Year 2 to Year 3.

As a diocese we are looking at the sustainability of all our schools, given the challenge around falling numbers. We are working with Lambeth Local Authority around amalgamations and reductions in PAN...”

15. The school has informed me that the admission arrangements for September 2025 have been determined, which means that the approval (or not) of the proposed PAN reduction for September 2024 will have no bearing upon the PAN determined for September 2025 which, I am told, is 30. Presumably, this PAN will have been consulted upon since it will have been a change to the determined arrangements for September 2024 as they currently exist with a PAN of 60.

16. In view of the fact that applications to the school continue to fall and the negative impact this is having upon the school’s budget, and in view of the proposed plan to amalgamate the infant and junior schools into a one-form entry primary school in order to make them sustainable, I find that the variation is justified by the circumstances and approve the proposed variation. It would be illogical for the school to continue to have a PAN of 60 going forward when such a PAN is not reflective of the school’s predicted intake for September 2024.

17. I am conscious that this is an odd time for the school to vary its arrangements. The closing date for primary school applications is 15 January 2024, therefore it is likely that a number of parents will have made applications before this determination was completed on the understanding that the PAN for the school is 60. I wondered, therefore, whether I should ask for the numbers of preferences actually expressed by 15 January which would have allowed me to have a clearer idea of the actual level of demand. However, since the number of allocations forecast is 28, and since there is nothing to prevent the school admitting over 30 children without the need for an additional teacher and classroom support, I see no point in delaying the approval of this proposed variation. Had there been evidence that parents would be disadvantaged by the PAN reduction taking effect at this time, my decision would have been different.

Consideration of the arrangements

18. Having considered the arrangements as a whole it appeared to me that the following matters may not conform with the requirements of the Code and so I brought them to the attention of the governing board. The school has declined to comment on any of these points, leaving the diocese to respond. The diocese has sent me a copy of its updated guidance and does not appear to disagree with any of my observations. I feel sure that the diocese will assist the school to make the necessary changes. The local authority has also confirmed that it has no comment to make.

19. I have listed the matters which concern me below setting out the relevant paragraphs of the Code and why the arrangements did not conform to requirements.

- The arrangements say: “St Bede’s Catholic and Nursery school is a feeder school for St Bernadette Catholic Junior school (Pupils from St Bede’s will be given priority)”. The Code provides that infant schools can be named as feeders for junior schools, however they must be listed as an oversubscription criterion so that the order in which places are offered is established and is clear from reading the admission arrangements. It appears from the order and framework of the arrangements that children attending the infant school are given higher priority than Catholic looked after children for example, which of course is not permitted under the Code. Relevant paragraphs of the Code are 1.7, 1.8 and 1.15. The arrangements will need to be revised.
- Listed as 1, 2 and 3 are various categories of looked after and previously looked after children. If the school wishes to give first priority to Catholic looked after children (which of course it is permitted to do as a faith school), there should still only be two categories. The categories should be: 1. First priority: Catholic looked after and previously looked after children (previously looked after Catholic children being defined to include those who appear to have been looked after outside England and who have now been adopted). 2. Second priority: Non Catholic looked after and previously looked after children, (again, previously looked after children must be defined to include those who appear to have been looked after outside England and who have now been adopted). The fact that “Other looked after children and other previously looked after children who have been adopted or who have become the subject of a child arrangements order” are listed under a separate heading makes it appear that they have lower priority than other previously looked after children. All Catholic looked after and previously looked after children must have the same level of priority as each other and all non-Catholic looked after and previously looked after children must have the same level of priority. The arrangements will need to be revised. Relevant paragraphs of the Code are 1.7 and 1.8. For the avoidance of doubt, this does not prevent the school giving a higher priority to Catholic looked after and previously looked after children than to any other children and nor does it prevent the school from giving a higher priority to Catholic children who are not looked after or previously looked after than to any non-Catholic looked after or previously looked after children.

- Listed as 4 in the admission arrangements are: “Baptised Catholic children, whose parents are resident in St Bede’s parish or St Simon and St Jude’s parish and are enrolled in the catechumenate”. I wondered why the admission arrangements do not give priority to Baptised Catholic children, whose parents are resident in St Bede’s parish or St Simon and St Jude’s parish who are **not** enrolled in the catechumenate. These children do not appear to have any level of priority at all since they are not mentioned. The diocese has said that it has some standard wording on this point, which will assist the school.

- There are two headings for the oversubscription criteria: ‘Oversubscription Criteria (Infant)’ and ‘Oversubscription Criteria (Nursery)’. The arrangements do not contain the heading ‘Oversubscription Criteria (Junior)’. This could be construed to mean that there are no oversubscription criteria applicable to admissions to St Bernadette’s. St Bede’s and St Bernadette’s are separate schools, and the law requires that each must have a determined set of admission arrangements. It is acceptable for the arrangements of both schools to be set out in one document; however the document must make clear which arrangements are applicable to each school. It may be that the ‘Oversubscription Criteria (Infant)’ are also intended to apply to admissions to the junior school. If this is the case, it is essential that the arrangements make this clear. Also, some of the provisions in St Bede’s admission arrangements cannot apply to St Bernadette’s, for example the provisions relating to the admission of summer born children, and deferred and part-time entry before a child has reached compulsory school age. These provisions only apply to admissions in Reception.

- The “Oversubscription Criteria (Infant)” say that “Faith based applications will have highest priority given to those who attend Mass weekly, then at least once a month and less often. For categories 2 and 3 above, the strength of evidence of the family’s Mass attendance on Sundays will increase the priority of an application within each category. This evidence must be provided by the parents and **can be endorsed by a priest** at the church where the family normally worships”.

- a. I was unclear from the wording of this provision in what circumstances a priest might need to be approached to endorse a particular application, or whether a priest would need to endorse all applications where faith-based priority is applied for. If the practice is that, in all cases where parents are applying for priority based upon faith and church attendance, a priest will be asked to complete a Supplementary Information Form, the arrangements should simply say that a form must be completed by a priest in all such cases and returned to the school by the parents before a specified date. Alternatively, the arrangements could say that the priest must be given the form by the parents and asked to return it to the school by a specified date. Either way, the arrangements must explain the process clearly. The diocese has said that a priest will sign the forms of all applicants claiming priority based upon faith and church attendance. This needs to be made clear. Relevant paragraphs of the Code are 1.37 and 1.38.

- b. I was also unclear from reading the arrangements how attendance at mass will increase priority for categories 2 and 3. These currently relate to non-Catholic looked after and previously looked after children. I can see how regular worship could make a difference under categories 4, 5 and 6, although the families whose children are given priority under 4 and 5 would not be attending mass. They would be attending other relevant worship in accordance with their faith. The diocese agrees that this part of the arrangements is incorrect and that it will need to be revised. Paragraph 1.37 of the Code is relevant.
- The arrangements say that “parents can request that the date their child is admitted to the school is deferred until later in the school year or until the child reaches compulsory school age in that school year; parents may also request that their child attend part-time until the child reaches compulsory school age”. As mentioned above, this provision cannot be applicable to St Bernadette’s. However, since it will apply to St Bede’s and since it has been brought to my attention, I will say that it should be made clear that parents have a right to defer entry and/or for their child to attend school part-time until he/she reaches compulsory school age. The relevant DfE Guidance indicates that admission authorities need to make these rights clear to parents [Summer born children starting school: advice for parents - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/summer-born-children-starting-school-advice-for-parents). The diocese had no comment to make, and this wording will need to be revised. Paragraph 2.17 of the Code is relevant.
 - Statements of Special Educational Needs are no longer made, so this might be a good opportunity to remove the references to them. Paragraph 14 of the Code is relevant. The reference to Statements of Special Educational Needs is incorrect, therefore the arrangements are unclear. Paragraph 14 of the Code is relevant.
 - There is no information telling parents the deadline for making an application to the local authority for a place under the Common Application Form (CAF), and no information explaining how late applications are treated. Paragraph 14 of the Code is relevant.

20. The diocese has told me that an additional part of its work with schools has been the revision of its admissions guidance document, and that key changes to the document relate to how the practice of Catholic and other faiths is measured and evidenced. The diocese says that it has made these changes to reflect the current landscape and to simplify the oversubscription criteria. I am sure that the school will be grateful for the assistance of the diocese in making the revisions necessary to ensure the arrangements comply with the requirements of the Code.

21. The governing board has not confirmed explicitly that it will address these matters. However, since it has requested that the diocese respond to the observations I have made and there appears to be no disagreement about the need to make changes, I am optimistic that the governing board will make the necessary revisions under paragraph 3.6 of the Code. To any extent necessary, and for the avoidance of doubt, the governing board is

required to make the necessary revisions as a result of this determination and must do so within the required timescale. Paragraph 3.1 of the Code requires that the arrangements be amended by 28 February 2024 to address the points set out in the above paragraphs.

22. I am grateful to both the local authority and the diocese for their helpful and prompt responses to my enquiries.

Determination

23. 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 St Bernadette's Catholic Junior School for St Bernadette's Catholic Junior School for September 2024.

24. I determine that the published admission number shall be 30.

25. 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 ways set out in this determination.

26. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code states that an admission authority must, where necessary, revise their admission arrangements to give effect to the Schools Adjudicator's decision within two months of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative timescale is specified by the Schools Adjudicator. In this case, the applicable date by which the arrangements must be revised is 28 February 2024.

Dated: 18 January 2024

Signed:

Schools adjudicator: Dr Marisa Vallely