

CHALLENGERS WIN PERMISSION FOR JUDICIAL REVIEW OF CATHOLIC SCHOOL DECISION

The High Court has granted permission for a Judicial Review of the Council's decision to go ahead with Catholic Voluntary Aided schools on the Clifden Road site in Twickenham. The request was made jointly by Richmond Inclusive School Campaign (RISC) and the British Humanist Association (BHA).

In accepting the application for a Judicial Review, Judge Ockleton of the High Court decided that *"Despite what the defendant [the Council] says it seems to me that it is arguable that [the consultation](#) was based on a decision that provision was necessary.... If that is right, section 6A was engaged."* Section 6A refers to the requirement introduced by the Education Act 2011 that a Council that thinks it needs a new school must first to seek proposals for an Academy/Free School. He also said that *"A claim based on the legality of a decision taken on 24 May 2012 does not appear to be out of time given the steps taken since, if section 6A applied, or if the consultation mis-stated the Council's position, [then the] decision was arguably unlawful."*

The Voluntary Aided secondary school that the Council approved would have up to 100% of places selected on the basis of faith, meaning in practice that only children whose parents are Catholics would stand any chance of getting in. The maximum permitted for a new faith-based Academy/Free School would be 50%.

The judge also granted RISC's request that the case be expedited, so that it can be concluded before the deadline for applications to schools in Richmond for pupils starting in September next year.

RISC spokesman, Jeremy Rodell, said *"The Court agreed with us that the Council's decision to give the Clifden Road site to the church for exclusive Voluntary Aided Catholic schools may be unlawful under the Education Act 2011. Assuming we can secure a reasonable limit on costs, it will now be decided by a Judicial Review. That's good news for the thousands of people in the borough who think that it's wrong to use the only currently-available site for a state-funded school that can turn away local children simply because of their parents' beliefs, especially when there's so much competition for high quality secondary school places."*

Asked for his reaction to Lord True's statement suggesting that RISC is an "acolyte" of the British Humanist Association, Mr Rodell said *"Lord True knows full well that RISC supporters come from right across the spectrum, even including some Catholics. Most supporters don't care about religion or Humanism but simply want good schools open to all. In the Council's own consultation, three-quarters of non-Catholics, including the majority of Anglicans, were against the proposed Voluntary Aided Catholic secondary school. RISC is a local campaign and could not have afforded to take the case to this stage. We're lucky that the BHA saw that it has national implications and decided to become involved. Lord True seems to find that hard to swallow. But surely even he is not saying that the Council should go ahead with a decision if it is not lawful."*

Notes & Background

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[New rules](#) that came into force on 1 February state that 'If a local authority in England think a new school needs to be established in their area, they must seek proposals for the establishment of an Academy' [i.e. a Free School]. The final decision is then made by the Department for Education (DfE).

However, on 24 May, Richmond Council approved two Voluntary Aided (VA) Catholic schools to open at Clifden Road in Twickenham without seeking proposals for Academies/Free Schools – a small primary and a 150-place/year secondary - arguing that the two schools are not “needed”, only “wanted” or “desired. New Academies/Free Schools are limited to a maximum of 50% faith-based selection. VA schools can go up to 100%, and this was the reason for the church and the Council wanting to avoid the new rule.

But the Council have previously said repeatedly that they think the schools are needed. For example:

- Following the decision to purchase a site for the school, the Leader of the Council said (press release July 2011) 'We have a growing need for more school places in the Twickenham area. This administration is acting decisively to address that need'.
- In a letter to local MP Vince Cable, the Cabinet member for schools said 'We are very appreciative of the constructive engagement we have had with RACC [*Richmond Adult & Community College, the vendors of the school site*], as whatever happens with the Catholic Secondary, it [*the site*] provides us with much needed primary and secondary capacity'.
- In a consultation about [what to do with the site](#), the Council set out as their 'position to date' that there was a 'Requirement for a Catholic school in borough'. They also said that 'as the Council has a basic need for additional primary school places, it would meet the cost of the proposed Catholic primary school.'

The Council are spending in the region of £10 million to acquire the site and buildings. They agreed to lease them to the Catholic Church for 125 years at a peppercorn rent.

On 9 February, the Council informed RISC that they believed they were within their rights to approve the VA schools without first seeking proposals for Academies. On this basis, on 29 March, solicitors acting on behalf of the BHA and RISC sent a pre-action letter before claim challenging the correctness of the legal position taken on the 9 February.

In their reply, the Council argued that this was premature, as the decision had not yet been made on what to do with the site or whether to approve the proposed Catholic VA schools. The BHA and RISC decided to accept this.

On the 24 May, the Council formally decided to approve both schools and give them the site. As a result, and after reviewing the decision, the BHA and RISC sent another letter before challenge on 9 June. The Council responded on 19 June, and after reviewing this response, the BHA and RISC applied for judicial review on 9 July. In their response to this, the Council argued that the application was too late, as it was likely that the case could not be heard prior to places for the schools needing to be advertised in October – in spite of the fact that it was also arguing that the schools are not needed at all.

The High Court made the decision to give permission for a Judicial Review on 21 Aug.