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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**KING'S BENCH DIVISION
(JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY JR335 (A MINOR) BY JR335(1) HIS
FATHER AND NEXT FRIEND FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

**AND IN THE MATTER OF A DECISION BY THE MINISTER FOR EDUCATION
MADE ON 7 JANUARY 2025 REFUSING TO APPROVE DEVELOPMENT
PROPOSAL NUMBER 728 FOR RATHMORE PRIMARY SCHOOL TO
TRANSFORM TO INTEGRATED STATUS**

and

**IN THE MATTER OF AN APPLICATION BY JR336 (A MINOR) BY JR336(1)
HIS MOTHER AND NEXT FRIEND FOR LEAVE TO APPLY FOR JUDICIAL
REVIEW**

**AND IN THE MATTER OF A DECISION BY THE MINISTER FOR EDUCATION
MADE ON 7 JANUARY 2025 REFUSING TO APPROVE DEVELOPMENT
PROPOSAL NUMBER 727 FOR BANGOR ACADEMY AND SIXTH FORM
COLLEGE TO TRANSFORM TO INTEGRATED STATUS**

**Mr Steven McQuitty KC with Ms Sinead Kyle (instructed by Worthingtons Solicitors) for
the Applicants**

**Dr Anthony McGleenan KC with Mr Philip McAteer (instructed by the Departmental
Solicitor's Office) for the Minister for Education, the proposed Respondent
Mr Matthew Corkey (instructed by the Education Authority Solicitors) for the Education
Authority, a Notice Party**

Hearing dates: 24 and 25 September 2025

McALINDEN J

Introduction

[1] The applicants are two minors, one of whom is a pupil at Bangor Academy (JR 336) and the other is a pupil at Rathmore Primary School (JR 335). With the benefit of legal aid, they challenge the decisions made by the Minister for Education (“the Minister”) on behalf of the Department of Education (“the Department”):

- (i) not to approve Development Proposal (“DP”) 728 to transform Rathmore Primary School to integrated status (JR335); and
- (ii) not to approve DP 727 to transform Bangor Academy and Sixth Form College to integrated status (JR336).

[2] The applicants’ grounds of challenge can be summarised as follows (having regard to the summary of their case as evident from their core propositions):

- (a) Breach of Article 64 of the Education Reform (Northern Ireland) Order 1989 (“the 1989 Order”);
- (b) Misdirection/error of law in understanding and applying Article 92(6) of the 1989 Order;
- (c) Misdirection error of fact in JR336’s application;
- (d) Failure to consider Article 92(8) of the 1989 Order;
- (e) Failure to take relevant matters into account;
- (f) Failing to apply/follow relevant guidance;
- (g) *Wednesbury* irrationality;
- (h) Failure of inquiry;
- (i) Procedural unfairness in JR335’s case;
- (j) Failure to give reasons; and
- (k) Making decisions “against the backdrop of an unlawful Strategy and Action Plan.”

[3] The factual background to these challenges can be briefly summarised in the following manner. In respect of the JR 335 challenge, DP 728 was published (on behalf of the proposer – the Board of Governors of Rathmore Primary School) by the

Education Authority (“EA”) on 8 February 2024. The statutory eight-week consultation process that commences with publication of a proposal concluded on 23 April 2024. A submission dated 17 September 2024 was provided to the Minister, recommending approval of the DP. The Minister refused the proposal on 7 January 2025 and recorded his reasons for doing so.

[4] In respect of the JR336 challenge, DP 727 was published (on behalf of the proposer – the Board of Governors of Bangor Academy and Sixth Form College) by the Education Authority (EA) on 8 February 2024. The statutory eight-week consultation process that commences with publication of a proposal concluded on 22 April 2024. A submission dated 26 September 2024 was provided to the Minister, recommending approval of the DP. Again, the Minister refused the proposal on 7 January 2025 and recorded his reasons for doing so.

[5] Detailed submissions were provided to the Minister in both cases which comprehensively dealt with all the relevant issues. These submissions were accompanied by all the relevant documentation provided by the proposers. It is clear that the Minister was in a position to make a considered and informed decision based on the materials he had before him. The key documents in these cases are, therefore, the submissions to the Minister, the documents accompanying them, including the two DPs and the two Cases for Change (“CfC”) and the reasons given by the Minister for refusing the proposals.

[6] It is trite law to state that in the context of the discharge of a specific statutory function where the decision-maker is fully informed of the multi-factorial elements relevant to the decision and is advised by appropriate subject specialists, the court’s role is limited and supervisory. A form of light touch scrutiny is the appropriate description for the intensity of review conducted by the judicial review court. See the decision of Scoffield J in *JR264* [2023] NIKB 68. The court’s role is limited to conducting an audit of the legality of the proposed respondent’s decision. Any challenge, in order to succeed, must establish *Wednesbury* irrationality or other illegality. The reference to multi-factorial elements above is not limited to school specific issues but extends to the general, planned provision of education, educational facilities and educational services in Northern Ireland.

[7] Importantly, in the context of the present challenge, Scoffield J made the following observations in para [64] of *JR264*:

“Given the nature of many aspects of the applicant’s challenge, it is also worth summarising the legal position which applies where it is contended that the decision-maker did not look closely enough at a certain issue. Provided the relevant considerations have been taken into account and the decision-maker has not strayed into irrationality, it is not for the court to assess the weight to be given to any particular factor. Nor is it generally for

the court to determine what factors are or are not relevant, unless this is clear as a matter of law (for instance, where these are set out in the governing statutory scheme). Nor is it for the court to dictate the level of inquiry in which the decision-maker must engage if they have considered an issue and determined not to embark on certain further enquiries, again subject to the over-arching threshold of *Wednesbury* irrationality. These limitations are reflected in Hallet LJ's helpful summary of the law relating to duties of inquiry in public law at para [100] of her judgment in *R (Plantagenet Alliance) v Secretary of State for Justice* [2014] EWHC 1662 (Admin)."

[8] In relation to the duty to give reasons, both Scofield J in *JR264* and Colton J in the earlier case *KE's Application* [2016] NIQB 9, applied with some adaptation, in the context of school development challenges, the summary of the relevant legal principles set out by Lindblom J in para [19] of *Bloor Homes East Midlands Limited v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin), in the context of a challenge to a planning decision.

[9] For present purposes, it is helpful to summarise the first three principles set out by Lindblom J:

"(1) ... Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to rehearse every argument relating to each matter in every paragraph

(2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the 'principal important controversial issues.' An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration ...

(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is

free, ‘provided that it does not lapse into *Wednesbury* irrationality’ to give material considerations ‘whatever weight [it] thinks fit or no weight at all.’”

[10] The legislative framework controlling the transformation of a school to integrated status has been set out in previous challenges and for that reason only a brief summary is included in this judgment.

[11] Article 64(1) of the 1989 Order, as amended, imposes a duty on the Department of Education to encourage, facilitate and support the development of integrated education and to provide support for integrated education. Article 64(2) stipulates that in considering what steps to take in order to fulfil this duty, the Department must take account of any relevant representations made under section 3 of the Integrated Education (Northern Ireland) Act 2022 (“the 2022 Act”).

[12] Section 3 of the 2022 Act describes the bodies that the Department must consult with. They are bodies appearing to the Department to have as an objective the promotion of integrated education and any other body the Department considers that it is appropriate to consult with.

[13] Section 5 of the 2022 Act sets out what is meant by “support” in Article 64(1) of the 1989 Order. It means identifying, assessing, monitoring and aiming to meet the demand for the provision of integrated education within the context of area planning and the overall sustainability of the school estate (including, in particular, monitoring the number and success of applications for integrated education). In this context, monitoring means monitoring by reference to data collected in respect of the catchment and other areas. It also means providing sufficient places in integrated schools to aim to meet the demand for integrated education within the context of area planning and the overall sustainability of the school estate (including examining evidence of expected further demand).

[14] Subsequent provisions of the 1989 Order as amended set out the procedure for the transformation of a school to integrated status. Firstly, there is a ballot of the persons eligible to vote (parents of children registered at the school). If there is a simple majority of votes cast in favour of transformation, then it is the Education Authority’s duty to submit a DP to the Department with its views thereon. The crucial provision that must not be lost sight of is Article 92(6) of the 1989 Order as amended. I set this out in full.

“(6) The Department shall not approve a proposal under this Article in relation to a school unless it appears to the Department that, if the school were to become or be established as a controlled integrated school, the school would be likely to provide integrated education.”

[15] So what does the phrase “be likely to provide integrated education” mean? Under section 1 (1) of the 2022 Act “integrated education” means:

- “(1) ... the education together in an integrated school, of–
- (a) Those of different cultures and beliefs and of none, including reasonable numbers of both Protestant and Roman Catholic children or young persons;
- (b) Those who are experiencing socio-economic deprivation and those that are not;
- (c) Those of different abilities.”

[16] Section 1(2) of the 2022 Act defines an “integrated school” as one which intentionally supports, protects and advances an ethos of diversity, respect and understanding between those of different cultures and religious beliefs and of none, between those of different socio-economic backgrounds and between those of different abilities that have acquired either grant maintained integrated status or controlled integrated status under the 1989 Order.

[17] Section 2 of the 2022 Act sets out the purposes of integrated education as being the delivery of educational benefits to pupils, the promotion of awareness of human rights, the promotion of equality of opportunity, the promotion of good relations and the promotion of respect for identity, diversity and community cohesion.

[18] Under section 2 of the Education Act (Northern Ireland) 2014, the Education Authority is under a duty (so far as its powers extend) to encourage, facilitate and support integrated education.

[19] Section 6 of the 2022 Act stipulates that the Education Authority has to take steps to ascertain the demand for integrated education in order to assist its strategic planning for the provision of education and such steps must include ascertaining the extent to which parents would prefer their children to be educated in integrated schools rather than at schools that are not integrated schools and in making decisions in connection with the provision of education, the Education Authority must have due regard to the views expressed by parents.

[20] Section 9 of the 2022 Act imposes a duty on the Department to prepare, publish and maintain a strategy document for the encouragement, facilitation, support for and provision of integrated education. The strategy document must deal with the resourcing of integrated education, including the quantification of funding commitments for integrated education. It must also cover matters such as the protection of the ethos of integrated schools and their access to the training and resources provided by the Education Authority.

[21] The strategy document must include action plans which contain proposals and timetables for reaching identified targets in respect of issues such as the percentages of pupils who are granted or denied their choice of education in an integrated school, the number of development proposals for the expansion of existing integrated schools, the number of schools transforming, the number of new integrated schools and the number of consultations issued in respect of transformed or new integrated schools.

[22] The strategy document must also contain measurable benchmarks against which the success of the strategy can be assessed and these benchmarks must be developed in consultation with those persons with knowledge and experience of integrated schools. The strategy document must make specific provision for reviews in order to provide a clear indication of how the Department and the Education Authority are delivering integrated education. Finally, the strategy document must be laid before the Assembly and the Department has to co-operate with the Assembly or any committee thereof in its scrutiny of the strategy document.

[23] Careful analysis of these legislative provisions reveals that there are a number of key issues relevant to the transformation process. Firstly, and most importantly, the Department in making a decision on any transformation proposal is bound by the mandatory requirement of article 92(6) the 1989 Order, as amended by the Integrated Education Act (Northern Ireland) 2022. The statutory language is clear and unambiguous. The Department shall not approve a transformation proposal unless it appears to the Department that, if the school were to become, or be established as, a controlled integrated school, the school would be likely to provide integrated education which in this context means education together in an integrated school of those of different cultures and religious beliefs and of none including reasonable numbers of both Protestant and Roman Catholic pupils.

[24] The requirement of Article 92(6) of the 1989 Order is not a requirement to be balanced against other factors. It requires to be applied. It requires the Department, that is the Minister when the decision is being taken by him, to form a view and unless it appears to him that, if the school were to become a controlled integrated school, it would be likely to provide education together in an integrated school of, inter alia, reasonable numbers of both Protestant and Roman Catholic pupils, he cannot approve the proposal.

[25] The assessment of what constitutes reasonable numbers in the case of any particular application is for the Department/Minister to determine, taking into account a whole raft of factors. The fact that the demand for integrated education outstrips the available provision of integrated education in the catchment area of the school wishing to transform is obviously relevant to the assessment of whether it is likely that reasonable numbers of both Protestant and Roman Catholic children will be enrolled in the school after transformation. But unmet demand in the catchment area must be demonstrated to include significant unmet demand amongst the

minority religion at the school. It is a nonsense to suggest that unmet demand automatically means that reasonable numbers of both Protestants and Catholics will be achieved if it transpires that there is a very significant disparity in numbers before transformation and the unmet demand in the catchment area comes solely or overwhelmingly from the majority religion at the school.

[26] Secondly, great emphasis is placed on the duty imposed on the Department and the Education Authority to support the development of integrated education and to provide support for integrated education. Para [13] above sets out what support means in this context. It is clearly a wide-ranging duty and it involves the Department doing the best it can to promote integrated education and to take steps to ensure that the demand for integrated education in any particular area is met.

[27] However, that does not mean that Article 92(6) can be ignored. Far from it. The meaning of the word support in this context must be informed by the provisions of Article 92(6) and what that entails is that the word support cannot mean giving blind approval to a DP which recognises that there is a very significant disparity in the numbers of Protestant and Catholic pupils in the school at present, with this disparity being reflective of a marked disparity in the catchment area, and yet having no evidence of unmet demand for integrated education within the minority community in the catchment area, no expressions of interest from that community and absolutely nothing concrete by way of plans or strategies, by means of ethos changes, curricular changes, or outreach or meaningful engagement, or otherwise, with the minority community in order to demonstrate that it is likely that reasonable numbers of both Protestant and Catholic pupils will be achieved.

[28] Support does not mean acting like the emperor's courtiers in the children's tale "The Emperor's New Clothes." It does not mean praising and flattering the emperor on his lovely, new outfit when he hasn't got a stitch on his back. In the context of a DP, support does not mean supporting or approving a DP where there is a clear issue of imbalance in the numbers of Protestant and Catholic children and young persons at the school at present and in the school's catchment area; there is no evidence of unmet demand for integrated education amongst the minority community in the school's catchment area; and there are no developed plans or strategies either proposed in the DP or already partially implemented which would give the Department or the Minister any basis for concluding that reasonable numbers of Protestant and Catholic pupils will be achieved.

[29] In such a case, purposeful construction of the word support could involve the EA and the Department setting out what were the perceived lacunae or shortcomings in the DP and perhaps giving advice as to how those issues could be addressed in order for the DP to gain approval but I stress that the word support in this context should not be interpreted as meaning that the EA or the Department were somehow obliged to give the green light to an obviously deficient proposal just for the sake of being able to demonstrate support for the cause of integrated education. Such an

approach runs directly contrary to the provisions of Article 92(6) of the 1989 Order as amended.

[30] It is also worthwhile highlighting that the language of Article 92(6) clearly signposts that significant deference should be given to the Minister's assessment of whether it is likely that there will be reasonable numbers of both Protestant and Catholic pupils. The phrase used is if it "*appears to the*" Minister and this phrase was clearly used deliberately and its meaning must be respected.

[31] I do not intend to go into all the documentation submitted in support of transformation in minute detail in this leave judgment but I would draw out what I regard as the salient points from the documentation in both cases. In both cases, the CfCs and DPs were prepared quite soon after the transformation of the two schools was first mooted. Ballots of the parents were carried out and a majority in favour of transformation of those parents who voted was obtained in respect of both schools. As an aside, in the case of Bangor Academy and Sixth Form College this did not represent a majority of the parents who were entitled to vote.

[32] Dr McGleenan KC, the proposed respondent's senior counsel described the documents submitted in support of transformation as being under-cooked. That description could fairly be described as charitable. In the case of the primary school, demand for integrated education in the area in question does not exceed supply. In the case of the post-primary school, although it is common case that demand for integrated education in the area in question does outstrip the available number of places in integrated schools, there is not one shred of evidence and certainly none was proffered to the Department that such demand comes either largely or exclusively or at all from the minority Catholic population in the area. In the case of the primary school, it is clear from the documentation that the availability of integrated places exceeds demand.

[33] Further, no expressions of interest were submitted with the documentation signifying that there was clear interest in the Catholic population in this area for the transformation of Bangor Academy and Sixth Form College or Rathmore Primary School into integrated schools. In both schools, Catholic pupils make up less than 3% of the enrolled pupils. The Catholic population in the area in question is approximately 12.6% in respect of Bangor town and approximately 13.6% in respect of the wider catchment area.

[34] Bangor Academy and Sixth Form College is a large school and is clearly sustainable but it is important to note that just 56 of its over 1,800 pupils are Catholic. Rathmore Primary school has a problem with declining admissions and has been running financial deficits in recent years. There are three other integrated primary schools in the area in question. Of the 583 pupils presently at the school, 17 are Catholic. Unless the trend in declining numbers is reversed, the number of classes in each year may be reduced from three to two.

[35] In both cases, the CfCs and DPs really don't have anything concrete to say as to how the numbers of Catholics attending the schools will be increased over time. These documents recognise the disparity in numbers that presently exist and express an intent to explore strategies to rectify the identified and recognised disparity but that is as far as the documentation goes. In essence, there is a complete absence of specific proposals to address the disparity and no evidential basis for any claim that any strategies or proposals even vaguely adumbrated or mooted in the documentation will be likely to address the acknowledged disparity either adequately or at all. There is nothing of substance which would entitle the Department or Minister to conclude that the requirement of reasonable numbers set out in Article 92(6) could be satisfied in either instance.

[36] The departmental report to the Minister in respect of Bangor Academy and Sixth Form College dated 26 September 2024 recommended that the Minister approve DP 727. However, it is expressly acknowledged at para [59] that:

“the CfC does not specify how it plans to tackle the disparity regarding the percentage of Catholic students at the school when considered alongside the wider community breakdown as reflected in the census. It simply provides evidence of awareness of the disparity and of a stated intent to explore strategies to rectify it.”

[37] At para [73] of the report, the Department specifically referenced the relatively new duty to support integrated education and the need to take account of any representations made under section 3 of the 2022 Act (consultation) which relate to that duty. The report specifically recognises that post-primary integrated schools in the catchment area “tend to fill above their approved admissions number.” The report goes on to state at para [76] that Bangor Academy: “could provide an additional integrated option in an area in which the three schools serving the wider area are oversubscribed.”

[38] The report goes on to draw out all the positives from the CfC, the DP and the representations made by the Northern Ireland Council for Integrated Education (NICIE) and the Controlled Schools Support Council (CSSC). The report also sets out all responses received from those schools in the area that were written to by the EA in respect of this transformation proposal and specifically records the EA's support for the proposal.

[39] Para [86] of the report then sets out a number of bullet points under the heading “Key Themes not in support.” It is highlighted that only 40.4% of the parents eligible to vote in the ballot voted in favour of transformation. The very small percentage of Catholic pupils presently at the school is noted. It goes on to state that the:

“only way Bangor Academy and Sixth Form College

could achieve greater religious integration in its pupil body is by reducing the degree of religious integration that exists in the other post-primary schools within the Bangor Learning partnership which would result in the mistaken public perception that the other 'non-integrated' schools were failing to promote diversity and inclusion and would be damaging to the reputations of those schools."

[40] The report noted that if Bangor Academy and Sixth Form College were to be granted integrated status, "there would be no post-primary non-selective Controlled school alternative for all parents in Bangor." In other words, any Protestant parents in Bangor who wanted to send their children to a post-primary, non-selective Controlled school would have to send them to a school outside Bangor, in Newtownards (Movilla High School), Dundonald (Dundonald High School) and Ballyhalbert (Glastry College). There were twelve "Key Themes not in support" and three "Key Themes in support." These were that the school already welcomed children from diverse socio-economic backgrounds with a range of abilities, the majority of those parents who voted were in favour of transformation and that if transformation was approved, the school would provide children in integrated primary schools seamless progression into integrated post-primary education.

[41] Importantly, the report specifically recorded that the views of the Integrated Education Fund (IEF) were specifically canvassed but this body did not see fit to provide any form of response. The importance of this is that after the Minister had taken his decision in this case, the IEF through Public Interest Litigation Support Northern Ireland (PILSNI) provided the applicant's solicitors with detailed statistics seeking to demonstrate that following the transformation of other post-primary controlled schools in the North Down area, the numbers of Catholics attending those schools had increased; the argument being that even in the absence of concrete strategies or plans to increase the number of Catholic pupils at Bangor Academy and Sixth Form College, the transformation of the school per se would lead to a meaningful increase in the number of Catholic pupils. I stress that this submission was not made to the Minister in advance of the decision being taken. The applicant's answer to that is that it matters not because the Minister's Department must have been aware of those statistics and should have appreciated their significance when considering the question of whether reasonable numbers could be achieved.

[42] The report goes on to address the issue of "Assessment against the Transformation Criteria" and firstly deals with "Unmet Demand for Integrated Education." The report then discusses the results of the ballot on 6 March 2022 and an online survey of staff and parents conducted in March 2023. The report again noted that other post-primary integrated schools in the general area were oversubscribed. The report concluded that the school was a sustainable school in an area where there was a high demand for integrated places. It noted that following on from previous legal challenges, "additional integrated places must be considered

regardless of the availability of alternative places in other sectors.”

[43] The report then notes that there were no “expressions of interest, or additional support for the transformation of the school.” The report noted that:

“This would have been beneficial for the Departmental assessment to determine the expected numbers and religious mix into the school in future.” The report notes that CfC:

‘does not specify how it plans to tackle the low numbers of students identifying as Catholic despite being aware of the issue and expressing intent to explore strategies to rectify it. There is no information provided in the CfC who it has approached in order to attract pupils from the minority religious groups, rather it hints of what it might do.’”

[44] The departmental report notes the arguments put forward by the NICIE to the effect that although there are very low numbers of Catholic pupils at the school at present because the Catholic population in the local area is about 13%, reasonable numbers would mean between 10% to 15% and because of the level of oversubscription for integrated education in the local area, the school, if transformation is allowed, would “be in a strong position to achieve a higher balance over time” using amended admission criteria.

[45] However, the departmental report at para [181] points out the weakness of this argument by stating that:

“This comment from NICIE cannot be substantiated. There is no evidence to confirm or support any assertion that those children who do not gain a place at Bangor Academy and Sixth Form College are of a Catholic tradition or that the current level of oversubscription is in any way a reliable indicator of the future religious balance of the pupil cohort.”

The report goes on to remind the Minister that:

“The transformation guidance, and Article 92 of the Education Reform (NI) Order 1989, makes clear that the Department will not approve a proposal unless reasonable numbers of both Protestant and Catholic pupils are likely to attend the school.”

[46] This is slightly inaccurate in that it implies that the Department has a choice in the matter. The Department does not have a choice in the matter. It is not that the Department will not. The Department cannot approve such a proposal unless reasonable numbers of both Protestant and Catholic pupils are likely to attend the school. The report goes on to indicate that the Department will assess the reasonable number issue by having regard to the current and historic nature of enrolments, expressions of interest, and the demographics of the local area. The guidance states that the school should demonstrate how it intends to attract pupils from the minority religious community. Pausing there, in this case historic and current enrolment of Catholic pupils is exceptionally low. There have been no expressions of interest and the school has patently failed to demonstrate how it intends to attract Catholic pupils.

[47] The report notes that the school seeking to transform does not need to demonstrate that there will be reasonable numbers of both Protestant and Catholics from day one after transformation but that this is likely to be the case over time. It notes that the Department will not adopt a one size fits all approach to the question of reasonable numbers but “recognises that the balance achieved will be dependent on the local circumstances in the area.”

[48] Para [189] of the report, to my mind demonstrates that the Department in advising the Minister has really taken its eye off the requirement of Article 92(6) and has invested the word “support” with a meaning which cannot be sustained in the overall statutory context. It reads as follows:

“The Department would expect that work undertaken by the school to date would provide assurance that it is likely to meet the requirements under the Act. Although the College could and should have set out more detail on progress to date, the level of detail in the CfC provides some evidence of an appreciation of the additional work that is required, much of which can only take place if the school is approved for transformation. As such, it provides a degree of assurance that the College is likely to meet the requirements under the 2022 Act should it progress such work in the event of approval of the DP.”

[49] In essence, in the absence of meaningful work to date, in the absence of detailed plans or strategies to carry out specific work in the future, but with some evidence of an appreciation of the additional work that is required, the departmental officials felt that they could state that this provides some reassurance that it is likely that the College would attract reasonable numbers of Catholics and Protestants if transformation was permitted. This is indeed a leap of faith and a leap which is patently unjustified on the basis of the evidence provided in the CfC or DP.

[50] This is reinforced by the subsequent comments in the report that the

departmental guidance recommends that before formal approval is given, schools should “start the process of cultural and operational change where possible” so that the Department can see “meaningful and demonstrable ways the school community is committed to integration. It will also ensure that change is being embedded thoroughly and gradually, and not just after a DP is approved ...” However, at para [199] of the report, we discover the following:

“There is no information on what the school has been doing in the interim period since the CfC was submitted for publication ... Additionally, a review of the College’s website provides no obvious evidence of this ongoing journey ...”

[51] Further, at para [205] the report states that:

“there is insufficient evidence to demonstrate that it can achieve a reasonably mixed religious balance. Whilst the Transformation Plan indicates that the school will work to attract more applications from the minority community it does not detail what the College will do to achieve this, or what it currently does.”

[52] Despite these clear statements of opinion, and largely inexplicably in my view, the report goes on to assert that the school, if it were to become an integrated school, would be likely to provide integrated education and that it is likely to meet the transformation criteria assessment (see paras [207] and [208] of the report). I say largely inexplicably because the only possible explanation for such a conclusion that I can think of is that the departmental officials in making this recommendation to the Minister were of the view that the newly inserted word “support” in the legislation meant supporting a proposal irrespective of how flimsy it was and irrespective of the lack of concrete proposals, plans and strategies to achieve reasonable numbers of Protestant and Catholic pupils over time. That is not what “support” means in this context and rather than being critical of the Minister for not agreeing with his officials, I would have genuine concerns about the strong possibility of a misinterpretation of the meaning of the word “support” by departmental officials leading to an inappropriate recommendation to the Minister for transformation in this case.

[53] The Minister made his decision in respect of DP 727 on 5 January 2025 and, in that decision, he cut to the chase and dealt fairly and squarely with the central issue in this case. Mindful of the statutory duty imposed upon him to encourage, facilitate and support the development of integrated education and to support integrated education, he stated that he had taken account of the documentation submitted in support of the application and had taken into account the representations made in support of the proposal. He noted that the school was clearly sustainable and then went on to consider the Article 92(6) issue. He noted

that the percentage of Catholic pupils at the school had ranged between 2% and 3% in recent years. He stated that he did not think that an overly rigid approach should be taken to what constitutes reasonable numbers and that there would inevitably be grey areas where reasonable people could disagree as to what constitutes reasonable numbers in any particular case.

[54] He then went on to state that he did not consider that the present or historic percentage of between 2% and 3% of Catholic pupils could under any analysis be said to constitute reasonable numbers, even considering the local demography of Bangor itself (9%) and Ards and North Down LGD (11%). He then went on to consider whether at some point in the future there are likely to be reasonable numbers of Catholic children at the school. He noted that the CfC does not specify how it plans to tackle the disparity regarding the percentage of Catholic pupils at the school when considered alongside the wider community breakdown as reflected in the census. He noted that the CfC simply provides evidence of the awareness of the disparity and of a stated intent to explore strategies to rectify it. The Minister was not required to define what reasonable numbers would be either in absolute terms or in percentage terms in the context of this proposal or to define the period of time that he considered should be allowed for reasonable numbers to be reached. He was simply required to make an assessment in accordance with the terms of Article 92(6) of the 1989 Order and that is what he did.

[55] The Minister stated that he would anticipate that integrated status for this school would be unlikely to have more than a marginal impact on the number of Catholic children attending the school. In summary, applying the statutory test, the Minister did not consider that the reasonable numbers requirement is currently met or that it could be met if the proposal was approved. Even on the most optimistic analysis, it would appear highly unlikely that reasonable numbers could be achieved. Crucially, he stated that:

“Examination and analysis of these issues and how they could be overcome have neither been set out in this proposal nor in any of the representations made from the bodies recognised under Section 3 of the 2022 Act.

[56] The Minister cannot be faulted for concentrating on the key issue in this case and addressing the matter which in essence operates as a knockout blow to any proposal. The Minister cannot in law approve a proposal unless he considers it likely that reasonable numbers presently exist or will be achieved. The Minister determined that he could not be so satisfied and even if a heavy-handed review was permitted, it would be hard to find fault with the Minister’s reasoning, let alone conclude that it was irrational or *Wednesbury* unreasonable.

[57] I now propose to deal with the Rathmore Primary School departmental report. The departmental report to the Minister in respect of Rathmore Primary School, dated 17 September 2024 recommended that the Minister approve DP 728.

The report acknowledges that there are three other integrated primary schools within a six-mile radius of Rathmore Primary School and that the availability of integrated primary school places in this area exceeds the demand for such places. Section 8.35 of the report describes Rathmore Primary School as a “popular and sustainable primary school. The school is however currently in a deficit financial position, and this will need to be addressed by the Management Team.”

[58] At section 8.43 of the report it is set out that between 2018 and 2023, the percentage of Catholic pupils at the school has varied between 3.8% and 2.92%. During that period the highest number of Catholic pupils was 24 out of a total of 632 in 2020/2021 and the lowest number was 17 out of a total of 583 in 2022/2023. However, it should be noted that different statistics are provided in Table 8 in section 9.6 of the report where it is stated that there were 15 Catholic pupils out of a total of 531 in 2022/2023.

[59] Section 8.44 records that the CfC recognises the number of children identifying as Catholic is low. It is noted that within the Catholic Church, primary aged children are prepared for their sacraments at this stage and that Rathmore does not currently offer this teaching although the school is considering community options as a first step to delivering this. However, the departmental report specifically states that no action appears to have been taken by the school to date to address this issue.

[60] In relation to the issue of the low number of Catholic pupils at the school, the report at section 8.4 notes that a Transformation Action Group (“TAG”) has been established and together with the principal, they created a Transformation Plan 2023-2026 in partnership with the EA, NICIE and other members of staff. The report states that:

“the CfC does not detail what actions have been taken to encourage community engagement and to determine what level of uptake there might be from the minority community although it does acknowledge that further action needs to be taken to address this. No ‘expression of interest’ forms to provide evidence of projected demand for Integrated provision.”

[61] This is followed up by further comments of a similar nature in section 8.48 where it is noted that the relevant guidance states that the Department will consider evidence of how the school intends to attract pupils from the minority religious community eg making links with non-traditional pre-school settings or ‘expression of interest’ forms from the minority community. “Rathmore PS has not provided evidence of progress to date on attracting the minority community.”

[62] At section 8.57 it is stated that the TAG contains insufficient evidence on action taken to date to grow and increase applications from the minority community

to help achieve a reasonable religious balance at the school. The TAG does identify steps which could be taken but the report states that there is no evidence of action “taken to date to try to encourage support for the integrated provision.”

[63] In section 8.62, the departmental report recognises that some steps cannot be taken prior to the approval of the DP, “it would have been expected that in the period from January 2023 the school would have begun to create links with local churches, pre-schools and voluntary groups to assess demand for integrated education in the local community.” Crucially it is stated that:

“There is insufficient evidence at this stage to demonstrate that it can achieve a reasonably mixed religious balance. There were no ‘Expression of Interest’ forms submitted or details of engagement with local pre-school or voluntary groups.”

[64] Examples of what other schools seeking to transform have done are given in section 8.64 and these include print and social media campaigns, setting up information stalls at local events, introducing new sports such as Gaelic football and inviting assembly speakers from a range of local churches. The report goes on to note at section 11.2 that the school is a popular sustainable primary school catering for pupils of differing socio-economic backgrounds and differing levels of academic ability. However, the school does not presently meet the relevant criteria as it cannot be said that there are reasonable numbers of both Protestants and Catholics at the school. Then at section 11.7 it is stated that:

“While it appears that there is still work to be done by the school before full transformation to Integrated status, it appears that the school is ‘likely’ to provide ‘integrated education’ based on the current definition.”

This is an assertion without any evidential foundation and it can only be explained by a misinterpretation of the word ‘support’ which has recently been inserted into the relevant legislative framework.

[65] The Minister was also provided with a report from the NICIE Development Team dated 23 April 2024 which was in favour of transformation. Correspondence from CSSC dated 25 March 2024 also indicated support for transformation. The Minister was also provided with comments from the Department of Education Policy Team and the Education and Training Inspectorate.

[66] The Minister made his decision in respect of DP 728 on 7 January 2025. He again stated that he had read all the papers and information pertaining to the proposal and stated that he was mindful of the statutory duty placed upon the Department to encourage, facilitate and support the development of integrated education and to support integrated education. He stated that he had taken account

of the representations made in support of the proposal. He noted that the school was clearly sustainable and then went on to consider the Article 92(6) issue. He noted that the percentage of Catholic pupils at the school had ranged between 2% and 3% in recent years. He stated that he did not think that an overly rigid approach should be taken to what constitutes reasonable numbers and that there would inevitably be grey areas where reasonable people could disagree as to what constitutes reasonable numbers in any particular case.

[67] He then went on to state that he did not consider that the present or historic percentage of between 2% and 3% of Catholic pupils could under any analysis be said to constitute reasonable numbers, even considering the local demography of Bangor West where the community balance is stated to be 64% “Protestants and other Christian religions” and 16% from Catholic backgrounds. He then went on to consider whether at some point in the future there are likely to be reasonable numbers of Catholic children at the school. He noted that examination and analysis of this issue and how it could be overcome has neither been set out in the proposal nor in any of the representations made from the advisory bodies under the provisions of the 2022 Act. He noted that no ‘Expression of Interest’ forms were submitted to demonstrate how this issue might be addressed should the school transform to integrated status. He noted that no evidence had been provided of practical steps taken since the submission of the proposal to attract pupils from a Catholic background. Given the absence of such evidence, the historic and present enrolment levels, the demography of the area and alternative integrated and Catholic maintained primary provision available, he concluded that the statutory requirement of reasonable numbers has not and will not be met.

[68] Under the legislation, the Minister is not required to define what reasonable numbers would be either in absolute terms or in percentage terms in the context of any particular proposal or to define the period of time that he considered should be allowed for reasonable numbers to be reached. He is simply required to make an assessment in accordance with the terms of Article 92(6) of the 1989 Order and that is what he did.

[69] Again, the Minister cannot be faulted for concentrating on the key issue in this case and addressing the matter which in essence operates as a knockout blow to any proposal. The Minister cannot in law approve a proposal unless he considers it likely that reasonable numbers presently exist or will be achieved. The Minister determined that he could not be so satisfied and even if a heavy-handed review was permitted, it would be hard to find fault with the Minister’s reasoning, let alone conclude that it was irrational or *Wednesbury* unreasonable.

[70] The applicant argues that a light-touch review is inappropriate because the Minister disagreed with his officials when coming to his decisions and, secondly, the statutory strategy which was in place at the time was subsequently successfully challenged. This first strand of this argument does not get off the ground because there is absolutely no authority in the case-law to support the proposition that just

because a Minister disagrees with his officials, a more intense degree of scrutiny is required in any subsequent JR challenge. Ministers are entitled to disagree with officials. That is part and parcel of the democratic process. In any event, as I have demonstrated above, the recommendations of the departmental officials in these cases is only explicable on the basis of a misinterpretation of the word 'support.'

[71] The second strand of this argument is equally firmly tethered to the ground. It is correct to say that the statutory strategy which was in place at the time was challenged and this challenge was subsequently conceded. However, when one considers the order of Humphreys J made on 2 September 2025, it is clear that the strategy was successfully challenged because it did not contain targets and measurable benchmarks. These are matters which are wholly divorced from the reasons for the decisions in these two instances.

[72] Turning now to address the specific grounds of challenge in these cases, it is not correct to say that Article 64 of the 1989 Order modifies or dispenses with the requirements of article 92(6). Article 92(6) was amended to its current form by the 2022 Act, the same Act which amended Article 64 to its current form. The requirements of Article 92(6) are clear and the statutory scheme as amended has to be read as a coherent whole. The legislature has decided that the requirements in Article 92(6) should be applied alongside Article 64. The Minister was acting consistently with the scheme provided by the 1989 Order and 2022 Act in applying Article 92(6) in the way that he did. He cannot be accused of acting in breach of Article 64 by applying the mandatory provisions of another article forming part of the same coherent statutory scheme.

[73] It is alleged that the decision on DP 727 was made "based on the mistaken and plainly material factual assumption that there were other integrated options available in the relevant area, when, in fact, integrated education is oversubscribed and where the submission to the Minister had noted that such places were 'extremely limited' in this area." It is argued that the information provided by IEF via PILS to the applicants' solicitors clearly demonstrates that the Minister made his decision on the basis of a mistake of fact. It is argued that the information relating to the increase in numbers of Catholic pupils in other post-primary integrated schools in the general area demonstrates that the number of Catholic pupils attending Bangor Academy and Sixth Form College in future years would increase until reasonable numbers were achieved.

[74] There are a number of relevant matters which do not feature strongly in the applicants' submissions. Firstly, IEF were specifically requested to make representations in respect of the DP 727 proposal prior to the public consultation phase and they remained absolutely mute. The information that is now being relied upon was not specifically brought to the attention of the Minister in advance of his decision making. The applicants argue that as the statistics that they seek to rely on are departmental statistics, they were, or should have been, within the knowledge of

the decision maker and, therefore, the fact that the applicants only brought these statistics to the attention of the Minister during this JR is neither here nor there.

[75] The statistics that the applicants seek to rely on related to Priory Integrated College in Holywood and Strangford Integrated College in Carrowdore. When Priory Integrated College transformed in 1998, Protestant pupils made up 78% of the student body and Catholic pupils made up 7% of the student body. The remainder were described as other or none. In the year 2022/2023, the percentages had changed to 56% Protestant, 15% Catholic and the remainder other or none. It would appear that the percentage of Catholic pupils had doubled over a period of 27 years. In the most recent census 67.9% of those included in the returns for Ards and North Down identified as Protestant and 13.6% identified as Catholic. In Holywood and Clondeboy, 62.1% identified as Protestant and 19.7% identified as Catholic and in Holywood town itself, 55.3% identified as Protestant and 25.8% identified as Catholic. Even after 25 years of integration, the percentage of Catholics attending the school was significantly less than the percentage of Catholics in Holywood.

[76] In relation to Strangford Integrated College, according to its website, it opened its doors on 1 September 1997. There are no statistics relating to its religious makeup when it opened its doors. At present, 41.1% of the pupils identify as Protestant and 20% identify as Catholic with 38.9% identifying as other or none. In relation to the Ards Peninsula, the latest census figures indicate a split of 62.4% Protestant and 23.6% Catholic with the remainder other or none. In the Carrowdore village area, the percentage split is 78% Protestant and 2.7% Catholic with the remainder other or none. The percentage of Catholics attending the school far exceeds the percentage of Catholics in Carrowdore village but is less than the percentage of Catholics in the Ards Peninsula. It is impossible to ascertain whether the percentage of Catholic pupils attending the school now has increased significantly since the school opened its doors 28 years ago.

[77] Is there any evidence to suggest that the Minister made his decision on the basis of a mistake of fact? The answer is categorically in the negative. Even if one assumes that the percentage increase demonstrated in the case of Priory Integrated College was replicated in Bangor Academy, a doubling of the percentage of Catholic pupils attending the school over a period of 27 years would, because of the numbers presently attending the school, only bring the percentage figure up to less than 6%. Further, there is absolutely nothing to suggest that the Minister did not take into account that in terms of integrated post-primary provision in the relevant area, demand outstripped supply.

[78] There was no mistaken factual assumptions in this case. There is absolutely no evidence to suggest that the Minister has not appreciated or taken into account matters which were addressed in the submissions provided to him and which, no doubt, he has read and relied upon in making his decisions. The Minister has stated that he has read and taken into account the information provided in the submissions and it is to be remembered that in the case of DP 727, the documentation specifically

recorded that the: “closest integrated post-primary schools are generally oversubscribed.” It was also stated that: “There is evidenced demand for post-primary education in the North Down and Ards area, as well as integrated provision, with available places in local Integrated schools extremely limited.” There is absolutely nothing to indicate that the issue of over-subscription was not taken into account. Crucially, there is not one shred of evidence in any of the documentation that this over-subscription largely, substantially or significantly results from the demand for integrated education in the local Catholic population.

[79] Insofar as the challenge is based on the assertion that the Minister was not entitled to take into account the availability of other well-regarded options for Catholic children including both Catholic maintained and other integrated options and the submission that the Minister cannot take any account of other provision outside the integrated sector, it is clear that the Minister cannot take into account the availability of other sectoral places when addressing the issue of oversubscription or lack of provision, but he clearly can take into account such provision when it comes to judging whether there is likely to be a demand for integrated education in the Catholic community as opposed to the Protestant community, especially when there is absolutely no evidence proffered to suggest that such a demand exists within the local Catholic community.

[80] It is argued on behalf of the applicants that the Minister “failed to consider exercising his discretion under Article 92(8) to require the EA to submit a further proposal within such a period as the Department may direct.” Article 92(8) provides a power. It does not impose an obligation. The power has to be considered in context. Scofield J in *JR264* at para [109] noted the following:

“Article 14(3) would permit the Department to direct an authority, such as the EA in this case, to bring forward a different proposal. I was informed that this power is rarely, if ever, exercised, which is perhaps unsurprising since it would likely require an authority to bring forward a proposal to which it was not genuinely committed, if at all. Nonetheless, the power is there to be exercised in appropriate circumstances.”

[81] There is nothing to indicate that either of these cases was a case in which that power to direct a further proposal should have been exercised, having regard to the reasons for the refusals. The proposers are not prevented from bringing forward fresh proposals. The Minister has clearly indicated what the problem is in both cases. The problem is reasonable numbers of both Protestants and Catholics. The proposers who incidentally did not see fit to challenge the Minister’s decisions, can bring forward fresh proposals with stronger evidential bases to address the issue of reasonable numbers, if they wish. It is just meaningless padding to argue in the context of these challenges that the Minister’s decisions are rendered unlawful by the

reason of him not specifically addressing the issue of the exercise of his discretion under Article 92(8).

[82] The applicants essentially list a number of matters which in almost every instance they accept were included in the relevant submissions and materials before the Minister, but which they feel should have been given more weight in the decision-making and claim they were not taken into account. The assertion that matters set out in the submissions were not taken into account is unsustainable following the authority of the Northern Ireland Court of Appeal in the case of *Re SOS's Application* [2003] NIJB 252, at para [19] where it is specifically stated:

“It is for an applicant for leave to show in some fashion that the deciding body did not have regard to such changes in material considerations before issuing its decision. It cannot be said that the burden is imposed on the decider of proving that he did do so. There must be some evidence or a sufficient inference that he failed to do so before a case has been made out for leave to apply for judicial review. In the present case there was no such evidence and in our judgment nothing from which such an inference could be drawn. We consider that the judge was right to regard the application as being without foundation.”

[83] The applicants cannot meet this hurdle in either of these cases. The Minister was provided with, and has plainly read, and taken into account all of the written materials. There is a fallacy in attempting to single out paragraphs within the submissions that weighed in favour of transformation in order to claim they have not been taken into account. The submissions, entirely properly, set out the matters weighing for and against approval of transformation and the reports contain recommendations based on officials' assessments of where the balance lay. The Minister was required to consider all relevant matters, including the recommendations, and make his own decisions. That is what he was required to do and that is what he did, explaining his decisions in doing so. The matter reduces to one of balance and assessment. These are matters of judgment for the Minister and the court will be very slow to interfere with such a judgment in the absence of obvious and identifiable irrationality.

[84] As to the Strategy for Integrated Education, it is correct that it was not explicitly referenced in the submissions to the Minister. The law does not require every policy to be cited in submissions, reports or decisions. It cannot be plausibly argued that the Minister was unaware of the Strategy. The Minister's duty under Article 64 of the 1989 Order to encourage, facilitate and support the development of integrated education was clearly referenced and formed a central part of the Minister's decision-making process. The principles underpinning the Strategy for Integrated Education align with this duty and with the broader objectives of the 2022

Act, which were also properly considered. In any event, the Strategy does not displace the Minister's obligation to consider the individual merits of any given proposal and, in particular, the application of Article 92(6). The decisions taken were not inconsistent with the Strategy and the applicants have not alleged and cannot hope to establish that some part of the Strategy would have pointed towards a different decision in these cases. This ground of challenge again reduces to an attack on the weight attached to various considerations set out in the material before the Minister and the overall balance struck in making the decisions, both of which are quintessentially matters which are exclusively for the decision-maker, subject only to *Wednesbury* irrationality; a high hurdle which the applicants cannot meet in this case.

[85] The applicants in their written submissions argued that the Minister failed to take into account and departed from relevant policy, namely "(1) *Integration Works* (particularly as to 'reasonable numbers'); (2) the *Sustainable School's Policy*; (3) the '*Call for Transformation*'; and (4) the then extant Strategy and Action Plan." These matters were not pursued at all in the course of oral submissions and at no stage did the applicants' senior counsel point to or identify anything in *Integration Works*, the *Sustainable Schools Policy* or the *Call for Transformation* that weighs in favour of a different decision or shows that the decision departed from relevant policy. The application of the *Sustainable Schools Policy*, as with all DPs, is clearly evident from the submissions and it is referenced throughout both submissions. *Integration Works* is referenced at various points in both submissions and the proposed respondent has sought to demonstrate how the decisions sit consistently with *Integration Works* and none of those submissions were challenged during the hearing of these matters. As to the planned *Call for Transformation* there is nothing about the impugned decisions which conflicted with it, nor was this claim pursued during the hearing.

[86] It is worth repeating that the Minister was required to apply the provisions of Article 92(6) and that is what he did, in circumstances in which the applicants cannot reasonably identify any part of the policies relied upon which would undermine the decisions he made or that can be said to demonstrate a conflict with them. Any reliance tentatively placed by the applicants on other provisions and policies is misguided. The focus of this court is firmly directed towards the Minister's assessment of the discrete issue he was required to consider under Article 92(6), in respect of which he is owed significant deference and the Minister's decision making on this issue can only be impugned if irrational/*Wednesbury* irrational.

[87] Having considered all the material in this case including the detailed submissions of senior counsel, I am compelled to conclude that the Minister's decision, considered fairly and in line with the established principles cannot be criticised as *Wednesbury* unreasonable. The matter reduces to one of judgment on the part of the Minister and the Minister's judgments made in these instances were plainly reasonable and certainly cannot be characterised as irrational/*Wednesbury* unreasonable. Many of the grounds relied upon by the applicants represent thinly

veiled challenges to the merits of the decisions and in this regard, the comments of Scofield J in JR264 at paras [154] and [156] are apposite:

“[154] As to the substance of the decision, ultimately, I consider there to be significant force in Dr McGleenan’s submission that much if not all of the applicant’s case – although ingeniously pleaded and presented with forensic skill – amounts to a merits challenge. The Permanent Secretary considered all of the relevant issues and was aware of the strong local opposition to the proposal from parents and others in Lurgan. However, the decision reached was rational, both as to the level of inquiry undertaken and the outcome.

...

[156] ... the role of the court is limited in disputes of this type. It is the EA’s function to determine how best to plan and provide educational provision in this context; and it is the Department’s function to determine whether any proposal brought forward by the EA should be permitted to proceed. Several of the arguments advanced in these proceedings touched upon the merits of the issues which are not for me to determine. In my judgment, the Department has acted within the bounds of what was legally open to it...”

[88] The applicants have also attempted to argue that the Minister has failed to make reasonable inquiries prior to making his decisions in these cases. The most authoritative summary of the public law *Tameside* duty is found in *R (Plantagenet Alliance) v SOS Justice* [2015] 3 All ER 261, at paras [98]-[100]. See also *ABO Wind NI Limited & Energia Renewables Company 1 Limited’s Application* [2021] NIQB 96 at para [108] and JR264 at para [64] as already quoted above. In particular, the English Court of Appeal in the *Plantagenet* case explained:

“[100] (3) The court should not intervene merely because it considers that further inquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the inquiries made that it possessed the information necessary for its decision (*R v Kensington and Chelsea Royal London BC, ex p Bayani* (1990) 22 HLR 406 at 415 per Neill LJ).

(4) The court should establish what material was before the authority and should only strike down a decision by the authority not to make further inquiries if

no reasonable council possessed of that material could suppose that the inquiries they had made were sufficient (per Schiemann J in *R v Nottingham City Council, ex p Costello* (1989) 21 HLR 301; cited with approval by Laws LJ in *R (on the application of Khatun) v Newham London BC* at [35])."

[89] The duty of inquiry is further limited by the statutory context in decisions of this nature. As Scofield J explained in *JR264*:

"[109] ... However, the level of inquiry which is required in respect of alternatives which have been considered and rejected by the proposer must be determined by reference to the nature of the statutory scheme. The Department is not the initial decision-maker. Its job is to consider the proposal before it, which has been formulated after an earlier period of statutorily mandated consultation; and the Department cannot be expected to go back to square one and re-undertake the process as if it was the proposer.

...

[111] The judge later (at paras [85]-[87]) rejected a related argument that the Minister ought to have made more enquiries as to the reasons for rejecting amalgamation in that case. In short, the degree to which the alternative to the proposal had to be considered was shaped by the statutory function of determining (only) the proposal before him. The two-stage nature of the process, with consideration of alternatives to be addressed primarily before the publication of the proposal, is also reflected in para 6.3 of the DP Circular, which states:

'Potential options for delivering the proposed change should be considered prior to the publication of the DP as the DP process does not provide for consideration of options or for determining which option is best value for money.'"

[90] It simply cannot be said that there has been insufficient inquiries made in the context of these when one considers the information provided, gathered and set out in the submissions for consideration. It is for the decision maker to decide if it is content that the information before it is sufficient, subject only to *Wednesbury* irrationality within the context of the decision-making under consideration. In summary, the high hurdle of irrationality/*Wednesbury* unreasonableness has not been surmounted in this case.

[91] It is alleged that the decision in *JR335* was contrary to the requirements of procedural fairness because the Minister counted the alleged inactivity of the school since the submission of their proposal against the school in refusing transformation where this was: (1) not a requirement; and (2) the school had not notice of any such requirement. The relevant part of the recorded reasons should be considered in full:

“I then consider whether at some point in the future there are likely to be reasonable numbers of Catholic children at the school. I note from the submission:

‘The Department notes that no Expression of Interest Forms were submitted to demonstrate how this might be addressed should the school transform to Integrated status. No evidence has been provided of practical steps taken since the submission of the proposal to attract pupils from different cultures and religious beliefs, and none, including reasonable numbers of Protestant and Roman Catholic young persons.’

Given the absence of such evidence, as well as historic and current enrolments, the demography of the area and alternative integrated and Catholic maintained primary provision available, I have to conclude requirements of S1(1)(a) of the Act have not been and will not be met if the proposal were to be approved.

I am not therefore of the view that the statutory test of whether it was likely the school would provide ‘integrated education’ namely, the education together of those of different cultures and religious beliefs and of none, including reasonable numbers of both Protestant and Roman Catholic children or young persons has been met.”

[92] In the absence of any concrete proposals as to how to address the issue of reasonable numbers, it is clear that the Minister looked to see whether the school had done anything concrete prior to transformation which might suggest that reasonable numbers could be achieved. The Minister was simply noting the absence of any evidence which would entitle him to be satisfied that the requirements of Article 92(6) could be met. The extract that the applicant in *JR335* complains of is a quote from section 9.8 of the departmental submission. This reflects similar statements set out at sections 8.50 and 8.59 (incidentally not referenced by the applicant) where it is made abundantly clear that the relevant transformation guidance states that:

“the Department will want to be satisfied about the school’s commitment to Integrated education and its commitment and potential to make a successful Transformation with the interests of pupils rather than the institutions being at the centre of any proposal. The guidance also states that the ultimate aim of the initial exploration phase is to develop a clearer understanding of the level of support for Transformation within the school community and the type of changes that would be necessary within the school to transform successfully.”

[93] It was clearly open to Rathmore Primary School to start the ball rolling in terms of efforts in the wider community to encourage interest in the school from the local Catholic community both before and after the DP was submitted. It is clear that nothing of the sort was done. In the absence of concrete strategies, plans or proposals in the CfC or DP to address the stark issue of reasonable numbers in the future, the Minister was clearly entitled to look, and might have been faulted for not looking, to see whether the school was, in the interim period, taking some steps to engage with the Catholic community in order to drum up support for transformation. The departmental report accurately reflected the absence of any such activities by the school. As with all of the applicants’ complaints, the real issue is the lack of sufficient supportive evidence in relation to either CfC or DP on the Article 92(6) issue, such that it did not appear to the Minister that, if the schools were to become controlled integrated schools, they would be likely to provide education together in an integrated school of reasonable numbers of both Protestant and Roman Catholic children or young persons. In these circumstances, the Minister had no power to approve the DPs and, to the contrary, was required to not approve them.

[94] In relation to the alleged failure to give adequate reasons, the classic formulation of the test which is applied in any reasons challenge remains that of Lord Brown in *South Bucks District Council v Porter* (No 2) [2004] UKHL 33 at para [36]:

“Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision ... The reasons need refer only to the main issues in the dispute, not to every material consideration ... Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.”

[95] Adequate reasons for both decisions have clearly been given, having regard to the content of the Minister's written records of his reasons read together with the materials before him and considered by him. That the applicants disagree with the reasons given and the judgments made on the Article 92(6) point is of no relevance to whether the reasons given are adequate. In these cases, they clearly are.

[96] On 4 September 2025, the Minister presented a written statement to the Northern Ireland Assembly which referred to the Department's Position Paper on 'Reasonable Numbers' September 2025. The Written Ministerial Statement provides valuable background information in relation to the issue of reasonable numbers and how the Department has interpreted that phrase. Dr Brian Mawhinney, the Education Minister who introduced the 1989 legislation accepted that a rigid definition of 'reasonable numbers' should not be applied but stated that: "it is axiomatic that an Integrated school should have a reasonably substantial representation of pupils from both backgrounds." Subsequent to the enactment of the 1989 Order, the Department adopted a policy on reasonable numbers that a new integrated school should attract 30% of its pupils from the minority community in the area where the school is situated. Existing schools transforming to integrated status were to demonstrate the ability to achieve a minimum of 10% of their first year intake drawn from the minority tradition within the school's enrolment and the potential to achieve a minimum of 30% in the longer term.

[97] The Written Statement goes on to note that the NICIE Statement of Principles for Integrated Education sets out that to promote equality in sharing between the diverse groups that compose the school community, integrated schools aspire to have an annual intake of at least 40% pupils from a perceived Protestant background and at least 40% from a perceived Catholic background. The Written Statement goes on to assert that educating reasonable numbers of Protestants and Catholics is, therefore, the core defining feature of Integrated Education since inception. At section 1.2 the following statement appears:

"While a rigid approach should not be taken to 'reasonable numbers' what constitutes reasonable numbers should be considered having regard to, the intention of the 1989 Order, the NICIE Statement of Principles, and the underlying rationale of contact theory that there should be a reasonable balance between Protestant and Catholic children."

The Written Statement explains that "Contact theory" would emphasise the importance that groups should interact as equals preventing one group from dominating the other and ensuring no group feeling marginalised. Positive contact between different groups under specific conditions can reduce prejudice and improve intergroup relations. Certain types of contact, particularly those involving equal status, shared goals, co-operation, and institutional support, are most effective in fostering positive attitudes and behaviours between groups.

[98] The Written Statement then set out the following statement of general principle that will be applied in the context of proposals to Transform to Integrated status.

“To ensure the process of Transformation is both well-grounded at the outset and capable of developing over time, the Department will expect, as a general principle, the proposer to provide evidence that the school is likely to be able to attract at least 10% of its total year 1 or year 8 from the minority religion, or in those schools seeking to transform to Integrated status, 15% of the combined number of Protestant and Catholic year 1 or year 8 pupils, in the first year of Transformation.

There may be exceptions to this general principle however, and each case will be considered in its own unique circumstances regardless of the percentage of Protestants and Catholics evidenced by the proposer.

Evidence is also required that this is likely to increase over the next 7 years to achieve reasonable numbers from the minority religion and an aspiration for the relative proportions of the two groups to be similar.”

[99] There then follows an analysis of ‘reasonable numbers’ in the six post-primary schools that have transformed to integrated status. In essence, none of these schools come close to the 40:40:20 aspiration and none seem likely to do so at any point in the foreseeable future. The picture is not much better in the 25 primary schools that have transformed to become Controlled integrated schools. The Written Statement goes on to make the following important point.

“These figures reveal that the transformation of schools to integrated status has had limited success in achieving balanced religious demographics, particularly between Protestant and Catholic pupils. Despite the aspiration for a 40:40:20 balance (Protestant: Catholic: Other), few of the transformed schools – primary and post-primary – come close to this target, and many are less balanced now than when they first transformed. In several cases, the minority community (whether Protestant or Catholic) remains significantly under-represented sometimes by ratios as high as 10:1. Even in schools transformed decades ago, reasonable numbers of both communities are not present and some have seen declines in diversity. These patterns suggest that transformation unlike newly

established integrated schools is not producing demographic integration and the reasonable numbers which define integrated education.”

[100] What this demonstrates is the clear determination by the present Education Minister to assert the importance of the Article 92(6) requirement of ‘reasonable numbers’ and to explain the rationale behind that requirement. Through the mechanism of this Written Statement, the Minister is trying to ensure that schools that are permitted to transform have a realistic chance of achieving reasonable numbers. This judicial review, when carefully examined, is an attempt by some proponents of integrated education to effect a reversal of the realistic stance taken by the Minister by arguing that the introduction of the word ‘support’ in the legislative framework in 2022 somehow means that a very lax attitude to the requirement of ‘reasonable numbers’ should be adopted.

[101] Such an attempt is doomed to failure for all sorts of reasons, but I would highlight one. The courts are not here as tools to be used by one party or another in disputes or arguments on socio-economic, cultural, educational, healthcare or other policies. The courts are here to uphold the rule of law, to clarify what the law means and to assist in ensuring that private citizens, corporate or other entities and government bodies and agencies act in a lawful manner and can avail of the protections the law affords them. All too often now, matters are brought before the courts in the guise of a legal challenge when in fact they are blatant policy challenges. Such litigations strategies are to be deprecated.

[102] Leave is refused in both these cases. The applicants who were not the proposers of transformation in these cases are legally aided minors and, in the circumstances, there will be no orders as to costs between the parties but the applicants’ costs will be taxed as assisted persons.