



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA3396

**Objector:** Surrey County Council

**Admission Authority:** The Governing Board of St John's C of E Primary School, Caterham

**Date of decision:** 29 August 2018

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2019 determined by the Governing Board of St John's C of E Primary School.**

**By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case, I determine that the arrangements must be revised by 30 September 2018.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by Surrey County Council (the objector) about the admission arrangements (the arrangements) for St John's C of E Primary School (the school) for September 2019. The objection is to the removal of the Published Admission Number (PAN) at the school for entry to Year 3 (Y3).
2. The objector is the local authority for the area in which the school is located. Other parties to the objection are the Southwark Diocesan Board of Education (the diocese) which is the religious authority for the school, the governing board of St Peter and St Paul C of E Infant School and Mr Sam Gyimah MP.

### **Jurisdiction**

3. These arrangements were determined under section 88C of the Act by the school's governing board, which is the admission authority for the school. The objector submitted their objection to these determined arrangements

on 8 May 2018. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

### **Procedure**

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
  - a. the objector's form of objection dated 8 May 2018, associated documentation (updated on 10 May to include the January 2018 census data) and further correspondence;
  - b. the school's response to the objection, supporting documents and further correspondence;
  - c. correspondence from St Peter and St Paul C of E Infant School;
  - d. correspondence from the Southwark Diocesan Board of Education;
  - e. correspondence from Mr Sam Gyimah MP for East Surrey;
  - f. a map of the area identifying relevant schools;
  - g. confirmation of when consultation on the arrangements last took place;
  - h. a copy of the minutes of the meeting of the governing board at which the arrangements were determined; and
  - i. a copy of the determined arrangements.

### **The Objection**

6. The objector considers that the decision by the governing board of the school to remove the PAN for admission to Y3 in 2019 and so end the admission of up to 30 children to the school at that point does not comply with paragraph 14 of the Code, which sets out that "*admission authorities must ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.*" The objector notes that, as part of the arrangements for admissions to Y3, the school previously named St Peter and St Paul C of E Infant School (the infant school) as a feeder school and the majority of children leaving the infant school joined the school each year for their key stage 2 (KS2) education. The local authority considers there would be limited and unsatisfactory options for the children from the infant school for KS2 if they cannot attend the school. Without a Y3 PAN, there is no guarantee that places will be made available at the school to these children.

## Background

7. St John's Church of England Primary School is a voluntary aided primary school for children aged 4 to 11 in Caterham, Surrey. It has a PAN of 60 for admission to the Reception Year (YR), and, for admission in 2018 and previous years, it also had a PAN of 30 for admission to Y3. Its admission arrangements at that time for Y3 included, at oversubscription criteria three, "*children in Year 2 at the named feeder school: Governors have named St Peter's and St Paul's C of E Infant School, Chaldon as a linked feeder school for admission purposes.*" St Peter and St Paul is an infant school, which is located 2.7 miles by road from the school. It has a PAN for YR of 30 and, as an infant school, provides education only until the end of Year 2 (Y2). It has no other linked school and the school was therefore the only school which specifically provided for the children leaving the infant school each year and needing to find places for their KS2 education.
8. The school consulted on changing its admission arrangements for 2019 and determined arrangements on 11 December 2017, which did not contain a PAN for admission to Y3. Consequent on this change, it follows that the arrangements also make no provision for children leaving the infant school at the end of Y2 to transfer to the school.
9. I think it is helpful if I say here that the school and the infant school both believe that the optimum solution to meeting the need for KS2 education for children who have been at the infant school is for the infant school to expand to become an all-through primary school. I say more later on in this determination about the scope for - and impediments to - this.

## Consideration of Case

10. I begin with the school's rationale for the changes it has made to its arrangements. The school's overriding concern is that admitting children to Y3 each year means that it struggles to manage the resulting budget and, in particular, that it cannot do so without resorting to mixed age classes, which, it says, are not popular with parents and which the school is keen to avoid. The school says that while it has a PAN of 30 for Y3, it does not actually admit that number or close to it in any year and this, combined with some vacancies in Y2, means that it has significantly fewer pupils in each KS2 year group than the 90 it has capacity for. The school has told me that in 2015 the new headteacher considered that the school would have been graded inadequate by Ofsted had it been inspected at that time but, with hard work and a new governing body, the school was graded as good by Ofsted in October 2017. The school argues that in order to thrive and to continue the progress it has made so far it needs to operate with a balanced budget and to do this it needs to be able to organise its provision cost effectively. This, it argues, it cannot do while continuing to admit a significant number of children (but fewer than 30) to Y3 each year.
11. Against that background, the governing board of the school wrote to the diocese, the religious authority for the school, on 20 September 2017 requesting approval to consult on the removal of the PAN at Y3. Paragraph 1.38 of the Code sets out "*Church of England schools must, as*

*required by the Diocesan Boards of Education Measure 1991, consult with their diocese about proposed admission arrangements before any public consultation.*” The diocesan response, as well as giving agreement to the consultation, asked that the school work closely with the headteacher of St Peter and St Paul to reassure parents there about the” *transitional arrangements*”. It urged the school to contact elected members and the MP and to take account of the impact on the infant school.

12. The consultation ran from 6 October to 17 November 2017. The consultation paper set out the aims of the changes:

- *“to safeguard the financial future of the school from the uncertainty over admissions numbers at entry into the school at Key Stage 2;*
- *maximise funding in order to provide the highest educational provision for all pupils including pupils eligible for pupil premium and pupils with special educational needs; and*
- *ensure that pupils are taught in year groups rather than vertical grouped [mixed age] classes.”*

13. There were 51 responses to the consultation of which 49 were from individual parents or interested parties, one from the local authority and one from St Peter and St Paul. Of the responses, 38 were in favour of the proposed reduction and 13 against. The responses were analysed by the chair of governors who recommended to the governing board that it should consider the following themes as a guide when forming its view on the outcome of the consultation:

- a. *“Consider whether they have a responsibility to meet the guarantee made to St P and P children that they have a place at St Johns at KS2. If so, what the response should be, such as exploring the viability of transitional arrangements;*
- b. *Whether the ability to gain control of the financial position of St Johns will secure the best education for children at St Johns now and in the future;*
- c. *Whether the potential impact on St P and P should outweigh the responsibility that St John’s has to secure the best educational provision for its children now and in the future  
Whether it has a responsibility to the Local Authority to promote its stated strategic position in relation to pupil numbers across the area.”*

14. The governing board met on 11 December to consider the responses and determined the arrangements for September 2019 to include the removal of the PAN at Y3. The governing board, in the minutes of the meeting, noted the concern about provision for children leaving the infant school if they could not join the school. The minutes record *“The governors reflected on whether they had a responsibility to offer places to the current*

*Reception pupils and whether they should put in place transitional arrangements for St P&P pupils. The governors **agreed** that by deferring the decision on any admission changes for a further two years would not be acting in the best interest of St John's.*" The governing board also considered whether it had a responsibility to the local authority to promote its stated strategic position in relation to pupil numbers across the area. The governing board decided to go ahead and determine arrangements without the Y3 PAN.

15. As noted above, the governing board of the infant school believes that the infant school should expand to become an all-through primary school. It believes that such expansion would be in the best interests of its pupils and would secure the infant school's future. It notes that the local authority's School Organisation Plan (January 2018) sets out that the council prefers to provide all-through primary schools, rather than separate infant and junior schools, to provide continuity between Key Stage 1 and KS2. In connection with its views, the infant school has developed costed proposals for expansion, which the headteacher of the infant school says "*have the overwhelming support of parents and our community*".
16. The infant school has also told me that the decision by the school to remove the PAN at Y3 has had an immediate adverse impact on it with some current parents/carers applying for in-year transfer away from the infant school and potential parents/carers being dissuaded from applying to the infant school, because of concerns about progression for their children due to the lack of viable options at KS2. The infant school has seen a drop from 35 to 21 in first choice applicants for September 2018 admissions and is concerned about possible closure if pupil admissions continue to decline because of the uncertainty about the options for transfer at KS2.
17. The governors of St Peter and St Paul consider that if the objection is upheld and the school reinstates the PAN at Y3 this would be helpful in the short term but the financial problems at St John's would continue. The governors at St Peter and St Paul further believe that remaining as a one-form entry infant school will not secure the infant school's own financial viability. They were also concerned that, if the objection is upheld, the local authority could take the view that it no longer needed to offer support to either school and that the local authority would withdraw support for expansion. I note that a one-form entry infant school is, indeed, a small school.
18. The diocese responded to the objection on 16 May 2018. It considers that the removal of the PAN at Y3 has sound pedagogical reasoning and would enable the school to raise attainment in all key stages throughout the school; improve teaching and learning; enhance opportunities for the recruitment, retention and deployment of all staff; improve pastoral care for children in challenging circumstances; and provide flexibility in areas such as curriculum design, delivery and school leadership and management. Because of the number of children admitted to Y3 combined with the numbers joining from Y2, the school runs mixed age classes but Diocesan

research has shown that mixed age classes cause a significant dip in pupil outcomes and the quality of teaching and learning.

19. The diocese is satisfied that the correct planning and consultation process was followed according to the Code and its own diocesan guidance. It reported that it had explored, with the two schools, the expansion of the age range of St Peter and St Paul to become an all-through primary school. It noted the local authority's support in principle but that expansion could only be progressed with funding not provided by the local authority.
20. The diocese is "*supportive of the expansion of St Peter and St Paul's to allow for greater choice in the area, greater joint working between the two schools and greater provision for all pupils [and] It is the firm belief of the Board of Education that both schools have taken a pro-active step to ensure that strong Church of England Provision can be maintained in the locality.*"
21. The local authority has objected to the change in the admission arrangements at the school on the basis that the removal of the PAN for admission to Y3 in 2019 does not comply with paragraph 14 of the Code, which sets out that "*admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.*" The key question I have to decide is whether the removal of the option to transfer from the infant school to the school is fair and, in particular, if it creates an unfairness to those children who are due to leave the infant school in July 2019 and who will need to find places at another school to continue their education.
22. I shall consider the information I have been provided with about the number of places available in the area, the impact of the changes on the school and the options for children leaving Y2 at St Peter and St Paul if they cannot go to the school.
23. The school, the local authority and St Peter and St Paul have submitted data about the numbers involved. The school set out the number of pupils admitted each year from St Peter and St Paul:

Year	Places taken
2017	21
2016	17
2015	19
2014	16
2013	16

Five-year average 17.8 pupils

24. The school reported that although 23 places have been accepted for 2018,

it believes the actual number starting in September will be lower. It says that this is based on its experience in recent years. The school acknowledges that parents at St Peter and St Paul may be considering alternative schools in the light of the uncertainty about the position at the school.

25. The local authority, in its objection, referred to 22 first preference applications from children at St Peter and St Paul with a further three first preferences from elsewhere for admission to Y3 at the school in 2018. I do not consider there is a substantive difference between the school and the local authority on the numbers for admissions, which do fluctuate up to the time that term starts. The local authority asserts that it is clear that the majority of pupils from St Peter and St Paul do transfer to the school. The school does not consider an average of 18 children transferring from St Peter and St Paul to the school constitutes a majority. However, clearly, given the current uncertainty because of the objection, the number of pupils applying to the school for September may fall even further.
26. I asked the schools to send me details of the numbers in each year group over the last few years to see the recent trends.

Number of pupils on roll at St Peter and St Paul C of E Infant School (PAN of 30 for YR)

	Total number on roll in September	Number on roll in Y2 September
2018	78	22
2017	89	29
2016	90	28
2015	87	28
2014	86	28
2013	90	30
2012	88	28
2011	86	26

Number of pupils on roll at St John's C of E Primary School, Caterham in September of each year

	YR	Y1	Y2	Y3	Y4	Y5	Y6	Total
2018	53*	54	60	87* (22*)	77	73	85	489/540
2017	57	60	59	80 (21)	74	85	64	479/540

2016	60	59	59	76 (17)	85	66	79	484/540
2015	59	60	58	81 (19)	73	80	71	481/540
2014	59	59	59	74 (19)	84	70	77	482/540
2013	58	58	55	81 (18)	74	81	79	486/540
2012	57	60	59	73 (19)	79	77	81	486/540
2011	58	57	51	81 (20)	74	79	77	477/540

\*numbers not confirmed for September 2018

Year 3 Figures in brackets are number of pupils arriving from St Peter and St Paul in September of each year at the school

One pupil already withdrawn from starting school in September 2018

27. All these figures show a trend of no more than two thirds - and often fewer – children moving from the infant school to St John’s for their KS2 education. That, combined with admissions of usually fewer than 60 at YR at the school, results in a relatively high number of vacant places in each KS2 year group.
28. The school has told me, and I accept, that this creates financial challenges if the school wishes to avoid mixed age classes. The school has sent me a detailed analysis for 2018 and the following two years based on a number of class organisation scenarios for years 3, 4, 5 and 6. Other scenarios set out the position if the PAN at Y3 is removed or is not removed but classes are organised in mixed ages. The school highlights the issues related to each set of assumptions including teacher recruitment and the employment of Learning Support Assistants.
29. The two schools and the diocese support the expansion of St Peter and St Paul to become a primary all-age school, thus removing the need for the transfer of pupils from St Peter and St Paul to the school. These parties all believe that this is in the best interests of both schools and the children they serve.
30. I note that the local authority is not opposed in principle to this. Indeed, the local authority commissioned a feasibility study for the proposal in May 2017 on the understanding that the schools and diocese would be able to find the finance for implementation. The local authority has stated that, as no new places would be created by the proposal, it would not attract capital funding, as it would not be eligible for a Basic Need grant. The school, in a letter to the diocese in September 2017, said that it looked into the possibility of selling land to fund the extra classrooms needed at St Peter and St Paul but came to the conclusion that the option looked unlikely given the valuation of the viable land to be sold off.

31. The local authority's Cabinet Member for Education, Councillor Mary Lewis, wrote to the Director of Education at Southwark Diocesan Board of Education in September 2017 to tell him that the feasibility study estimated the cost of expanding St Peter and St Paul at £2.15million but it was not eligible under the authority's funding streams.
32. In addition, the local authority did not consider it could justify additional borrowing to fund the expansion. While recognising that the diocese also did not have the funding needed, the councillor suggested the possibility of seeking Community Infrastructure Levy funding which at the time had a "bid window" opened. She suggested that it would be most appropriate for the bid to be submitted by the diocese. The local authority commented on 23 May 2018 that there was no evidence of formal bids made for such funding although the level of funding involved would be unlikely to be sufficient for the expansion.
33. There is further support for the change for the infant school to become a primary school and for the primary school to cease to admit children to Y3. In November 2017, the constituency MP for East Surrey, Sam Gyimah, and two local councillors wrote to Councillor Lewis in support of these changes. The letter reported the support of both headteachers, parents, governors and the diocese, which would be seeking funding. The MP and the councillors asked for the local authority's support for the proposal. The MP also wrote to the Chief Adjudicator on 16 May expressing his concern about the position of both schools
34. I have explored carefully the options for pupils currently at St Peter and St Paul if the objection is not upheld and the school's decision to remove the PAN at Y3 remains in place for September 2019. As part of its objection, the local authority submitted details of the offers made to the four nearest alternative Surrey schools with Year 3 admissions, on national offer day 2018:

School	Distance from St. Peter & St. Paul (Miles)	Y3 PAN	Offers for Y3 2018/19	Vacant Places
Earlswood Junior School	3.98	120	124	0
Reigate Priory Junior School	4.87	150	150	0
St. Mary's Junior School	4.90	120	120	0
Holland Junior School	6.30	60	44	16

35. The infant school has 22 pupils who will be in Y2 in September 2018 and thus seeking Y3 places in September 2019. It is clear from these figures that no one school within a reasonable distance of the infant school has capacity to admit all the children who will be leaving the infant school next July (or in subsequent years for that matter). Taking the average number of children who have transferred from the infant school to the junior school in recent years, it is clear that there is no one school which could

accommodate this smaller group of children. The local authority concludes that the total number of places available at the four schools above is not sufficient to accommodate the demand for KS2 places at the school that would be displaced if the Y3 PAN were to be removed.

36. The local authority also submitted the number of vacancies recorded across this group of schools in the January 2018 Census:

School	Distance from St. Peter & St. Paul (Miles)	Y3 PAN	Y3 Number on Roll (January 2018 Census)	Vacant Places
Earlwood Junior School	3.98	120	117	3
Reigate Priory Junior School	4.87	150	150	0
St. Mary's Junior School	4.90	90*	93	0
Holland Junior School	6.30	60	47	13

N.B. It is worth noting that the PAN of St. Mary's Junior School was expanded by 30 places between 2017 and 2018 entry and that this school will amalgamate with Downs Way Infant School to become an all through primary school from September 2018 with a Year 3 PAN of 60.

37. There are a number of vacant places at primary schools within the area, but the local authority considers that there are not enough to deliver sufficient places to meet the shortfall created by the removal of the Y3 PAN at the school. The local authority contends that the consequence would involve sending a significant number of pupils to schools that would be over the three-mile statutory walking distance from their homes, taking the St Peter and St Paul site as a basis for calculation.

38. The school presents the issues differently. It argues that there are sufficient places to admit pupils from St Peter and St Paul. It makes this argument on the basis that the local authority has considered only schools which admit regularly to Y3 and have a PAN for this purpose whereas the school considers that children could be admitted as casual admissions to primary schools which do not have a specific Y3 PAN. The school points out that it is not the nearest school to St Peter and St Paul but the seventh nearest school. The local authority says that it is the nearest school which admits and has a PAN for Y3.

39. The school does not consider that the local authority has acted promptly to address the low numbers entering Y3 and the consequent financial effect on the school. The local authority has not suggested any alternative other than mixed age classes, which the school acknowledges, is implemented successfully in some schools but which, it argues, creates particular difficulties with children being admitted at Y3.

40. The local authority projects increasing demand for school places and says that the school's decision to remove 30 places at Y3 and 120 overall is likely to exacerbate that position. Its projections within the current forecast horizon and forecasts for the Caterham Primary Planning Area (which incorporates both the school and St Peter and St Paul) are set out below:

Year	YR PAN	YR Projection	Projected Surplus
2018/19	270	262	8
2019/20	270	274	- 4
2020/21	270	284	- 14
2021/22	270	281	- 11
2022/23	270	285	- 15
2023/24	270	288	- 18
2024/25	270	291	- 21
2025/26	270	293	- 23
2026/27	270	295	- 25

41. The local authority has objected to the change in the admission arrangements at the school because it does not consider that the change meets the criterion in the Code at paragraph 14 that “*the allocation of school places are fair, clear and objective*”. Moreover, the local authority believes that the forecasts outlined show increasing demand for places at St Peter and St Paul and, therefore, in due course, increased demand for places at the Y3 transition point.
42. If children cannot move from the infant school to the school in 2019, then, in my view, the following will happen. The children will not all be able to go to the same school; they will either have to travel significantly further to reach schools which admit at Y3 or they will be dependent on finding places at schools which do not regularly admit at Y3 and which happen to have vacancies. I note that not all children currently move from the infant school to the school but the majority do and if this arrangement ends this is likely to affect friendship groups built up in the early years as the children are split between more schools. There would be more uncertainty for parents who might have to rely on places being available at other schools without an entry point at Y3. There is also likely to be an additional cost to the local authority for home-school transport.
43. The school, infant school, Diocese, the local MP and local councillors all draw attention to the desirability of expanding the age range of the primary school. I agree that this would address the concerns I have set out above and I note that it is consistent with local authority policy. However, it is also clear to me that the funding required to support such a change has not been secured. I also note that such a change would require statutory proposals in accordance with the relevant provisions of the Education and Inspections Act 2006 and The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations. Even if the necessary funding were secured, it is far from clear that the statutory processes and the building work needed to provide additional accommodation could be completed in time for September 2019.
44. Taking all these factors into account, I do not consider that it is fair to the children at St Peter and St Paul that the option to move to the school at Y3 should be removed while there is no certainty at all that they would be able to stay at their current school or have easy access to other conveniently

located schools and the chance to remain with a significant number of their existing peers. I accordingly uphold the objection.

45. My jurisdiction applies only to the admission arrangements for Y3 in September 2019. If progress can be made in relation to expanding the age range of the infant school, then it would, of course, be open to the school to seek to remove the Y3 PAN with effect from 2020 or a later year following the necessary consultation.

46. Finally, I have considered the timing for the admission authority to make the necessary changes to its arrangements consequent on my determination. The Code requires the arrangements be varied within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case, making the change is extremely straightforward; it is simply to re-instate the Y3 PAN. The local authority must publish its composite prospectus for admission to Surrey schools in 2019 by 12 September. Parents will then begin to look at that prospectus and consider where they would like to apply for places for their children. I have considered whether to specify a date of 12 September. However, the school will return from its summer break less than a week or so before then. In order to balance what is reasonable to expect of the school's governing board with the need for certainty for parents, I have decided that the arrangements must be revised by 30 September 2018.

### **Summary of Findings**

47. The school has said that it did not take the decision to remove the PAN at Y3 lightly and I accept that it is genuinely of the view that it would benefit pupils who join it in YR if it were able to operate as an all-through primary with no Y3 intake. The school, the infant school and the diocese all believe that the infant school should expand and that children who join it at YR should then be able to have their whole primary education there. The local authority is clear that there is currently no funding available to support this and neither the diocese nor the school has provided me with any evidence of available funding. Such a change would also be dependent on a separate statutory process. I am certain that while not all children at the infant school transfer to the school, enough of them do so that removing the PAN at Y3 without identified alternative options for these children would create unfairness for them as well as costs for the local authority in terms of transport to other schools. I am not persuaded that there is scope for these children to attend other reasonably local schools. I am particularly concerned that relatively young children would face lengthy journeys to school which could be avoided. I am also concerned that – to the extent that finding a place for KS2 relied on places being available in-year at schools which do not usually admit to Y3 – this would also create unnecessary stress for parents. I have upheld the objection and I have specified that the arrangements must be varied by 30 September 2018. .

### **Determination**

48. In accordance with section 88H(4) of the School Standards and

Framework Act 1998, I uphold the objection to the admission arrangements for September 2019 determined by the Governing Board of St John's C of E Primary School.

49. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case, I determine that the arrangements must be revised by 30 September 2018.

Dated: 29 August 2018

Signed:

Schools Adjudicator: Lorraine Chapman