



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3437

Objector: Portsmouth City Council

Admission Authority: Bohunt Education Trust for Priory School in Portsmouth

Date of decision: 4 September 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 Bohunt Education Trust for Priory School in the local authority area of Portsmouth City Council.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by Portsmouth City Council, about the admission arrangements for 2019 (the arrangements) for Priory School, an academy secondary school for children aged between 11 and 16 years.
2. The objection is to the consultation undertaken on reducing the published admission number (PAN) of the school, the objector arguing that the consultation was misleading and incomplete; and to the reduction of the PAN from 250 in 2018 and previous years to 225 for 2019.
3. The parties to this objection are:

- a) Bohunt Education Trust (the trust) which is the admission authority for Priory School (the school); and
- b) Portsmouth City Council which is the local authority area in which the school is situated and the objector (the local authority).

Jurisdiction

4. The terms of the academy agreement between the trust and the Secretary of State for Education require that the admissions policy and arrangements for the school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the trust on that basis. The local authority submitted its objection to these determined arrangements on 11 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. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

5. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
6. The documents I have considered in reaching my decision include:
 - a. the local authority's form of objection dated 11 May 2018; supporting information such as the local authority's '*Secondary School Place Strategy 2017 – 2023*'; and further information provided at my request;
 - b. the school's response to the objection, supporting documents and replies to my questions;
 - c. maps of the area identifying relevant schools and the catchment area for the secondary schools in the local authority area;
 - d. information on the most recent consultation on the arrangements;
 - e. copies of the minutes of the meetings at which the trust discussed and then determined the arrangements;
 - f. the funding agreement for the school;
 - g. information on the websites of the Department for Education (DfE), the school and the local authority;
 - h. the local authority's annual report to the adjudicator for 2017; and
 - i. copies of the determined arrangements for 2018 and 2019.

The Objection

7. The objection has two parts. One is that the consultation on the proposal to set a lower PAN for 2019 compared to 2018 was misleading and incomplete because the consultation letter:
 - a) gave the impression that the school was significantly undersubscribed when this was not the case; and
 - b) did not provide information previously provided to it that there was a forecast shortage of secondary school places.
8. The second part of the objection is to the setting of the PAN at 225, which is a reduction of 25 places from previous years. The local authority has objected to this because it believes that these places will be needed as it has forecast that in 2019 there will be very few spare secondary school places in Portsmouth and that by 2020 there will be insufficient secondary school places.

Other Matters

9. As I considered the arrangements other matters came to my attention which may not comply with the Code. These are listed below (with the most relevant paragraphs of the Code in brackets).
 - a) It may not be clear that a child with an education, health and care plan which names the school will be admitted (14 and 1.6).
 - b) Priority 3 in the arrangements is for children living within the school's designated catchment area but no information on the catchment area is provided. This may make the arrangements unclear (14, 1.8 and 1.14).
 - c) The definition of sibling may be unclear (14, 1.8 and 1.11).
 - d) The information on how distance is measured is not consistent with the requirements of the Code (14 and 1.13).
 - e) There is no information on how the home address is determined if a child lives part of the week with each parent following the breakdown in their relationship (14 and 1.13).
 - f) There is no information on the admission of children outside their normal age group (14 and 2.17).

Background

10. The city of Portsmouth is the local authority area. It is a port city with a large naval base on England's south coast, mostly concentrated on Portsea Island. The local authority describes Portsmouth as, "*an island city.*" The sea is its boundary to the west, east and south. The city extends to the north onto the mainland across what is a very narrow strip of water with good communication links via road and rail bridges. The adjacent local authority area is Hampshire. It follows from the

area's geography that children living in the catchment area of the school can only go to school in Portsmouth itself (including Portsea Island and the part of Portsmouth north of this) or travel further north to schools outside the area. Eight of the ten secondary schools in the local authority area are situated in the Portsea Island part of the city. Portsmouth is, according to the local authority's secondary school place strategy (the strategy), the most densely populated city in Britain outside of London. Because the area is so densely populated, many children have several secondary schools within easy travelling distance of their homes.

11. The school became an academy in 2014. The school's trust is a multi-academy trust which, according to the DfE website, '*Get information about schools*,' is the academy trust for five secondary schools. There is also a local governing board for the school. The school is situated in the south of Portsea Island. Part of the building is grade one listed as a building of historical interest. The school was judged to be good by Ofsted in 2016.
12. Portsmouth is, in common with many other parts of England, experiencing an increase in numbers of pupils needing secondary school places. The objection explains that the local authority is tackling this with its secondary school place strategy. The local authority developed the strategy over several years and formally consulted all secondary school headteachers in its area on the strategy in September 2017.
13. The strategy explains that its development was stimulated by a projected deficit of places. It describes how there had been an "*unprecedented rise in pupil numbers at primary level*" and how, despite increasing the number of primary school places by 1,600 since 2012, there was only a surplus of two per cent of primary school places across the local authority area. Against that background, the purpose of the strategy was to make sure that there were sufficient secondary school places as these children moved from primary to secondary school beginning from September 2019. It also noted that, "*The demand for school places in Portsmouth has been fuelled by rising birth rate, inward migration, reductions in the number of children accessing education outside of Portsmouth or accessing independent education; and the impact of regeneration schemes and housing developments.*"
14. The strategy provided details of the number and type of schools in the local authority's area, the methodology for forecasting the demand for school places including information on the percentage of children choosing a secondary school outside the local authority's boundaries, and forecast pupil numbers against capacity. These last figures show just over one per cent surplus capacity (38 places) for admissions in 2019 and nearly three percent deficit (60 places) for admissions in 2020. The forecast deficit of secondary school places increases each year until 2023 when the forecast ends. Table 2 below gives further details.

15. The oversubscription criteria for the school for 2019 can be summarised as:
- a) Looked after and previously looked after children
 - b) Children or families with a medical, physical, psychological need
 - c) Children living within the catchment area with priority given in the following order:
 - i. Siblings of students at the school
 - ii. Children attending a feeder school
 - iii. Children eligible for the service premium
 - iv. Children living closest to the school in a direct line
 - d) Children living outside the catchment with priority given as in 3) above.
16. The catchment area for the school is to its south and south east of the local authority area with the school on the north west edge of its catchment area. Most of the secondary schools in Portsmouth have catchment areas and include a priority for those who live in their catchment area in their oversubscription criteria. All addresses in the local authority area will be in the catchment area of at least one secondary school.

Consideration of Case

17. I deal first with the part of the objection which relates to the consultation. Before turning to the particular concerns raised by the local authority, I will consider the consultation against the specific requirements of the Code.
18. The Code requires that consultation must be undertaken when admission arrangements are proposed to be changed. Paragraph 1.43 of the Code states that “*consultation **must** last for a minimum of 6 weeks and **must** take place between 1 October and 31 January in the determination year.*” Paragraph 1.44 of the Code sets out who must be consulted and says: “*Admission authorities **must** consult with:*
- a) *parents of children between the ages of two and eighteen;*
 - c) *all other admission authorities within the relevant area (except that primary schools need not consult secondary schools);*
 - d) *whichever of the governing body and the local authority who are not the admission authority.*”
19. Paragraph 1.45 of the Code says, “*For the duration of the consultation period, the admission authority **must** publish a copy of their full proposed admission arrangements (including the proposed PAN) on their website together with details of the person within the admission authority to whom comments may be sent and the areas on which comments are not sought.*”
20. The school has told me that the consultation ran from 1 December 2017 to 26 January 2018 and this meets the requirements as to the timing and duration of consultation set out in the Code. The school has

told me that it consulted by means of a letter which explained that it wished to reduce its PAN from 250 to 225. I have been provided with a copy of this letter. The only change proposed in the consultation letter was the change to the PAN. The letter stated that a copy of the proposed admission arrangements were attached to the letter as was a proforma for sending in responses which was itself headed *“Proposed changes to Published Admission Number (PAN) in Year 7.”* The school told me that it sent the letter to all schools in the local authority area, to parents with children at the school and to the local authority. The school has also told me that it published its proposed admission arrangements on its website as required by paragraph 1.45 of the Code.

21. I wished to understand how parents who may be considering seeking a place at the school were consulted, or, to put it another way, how the school made sure that such parents knew about the proposed changes and their opportunity to comment on these. I asked the school if it had asked the primary schools it had consulted to pass the letter on to parents and what other means it had used to communicate the consultation to parents. The school told me, *“As an academy trust we do not have access to this data so we have published it on our website, put it in newsletters and circulated it to all the schools in Portsmouth. However, it is the decision of the individual HT of each schools (sic) to bring it to parents’ attention via newsletters etc. No specific request was made to circulate and I know of no circumstances where such a request has been made by any other school in the city.”* I have assumed that the reference to *‘this data’* means ways of informing parents of children between the ages of two and eighteen.
22. I asked for further information from the school on how it publicised its consultation. On the basis of the information provided to me, there is no evidence that the school made any meaningful attempt to bring its consultation to the attention of parents who did not already have children at the school. This would not have required the school to contact directly all parents in the area; that would not be reasonable. But it would have been possible to use means such as asking local primary schools to pass on information about the consultation, making use of local social media and local publications and using community notice boards to promote the consultation. The school did not consult on its proposed changes with parents of children between the ages of two and eleven. This group are likely to have the greatest interest in the admission arrangements of the school. Of course, some of those parents with children already attending the school may have been interested in the consultation as they may have younger children who will be seeking admission to secondary education in the future. I conclude that while the school made some effort to consult on the reduction in its PAN from 250 to 225, it did not take sufficient measures to consult with parents with children between the ages of two and eighteen as required by the Code. The consultation thus did not meet the requirements of paragraph 1.44 of the Code.

23. I turn now to the content of the consultation letter. The local authority argued in its objection that the consultation letter was misleading and incomplete because the consultation letter:

- a) gave the impression that the school was undersubscribed when it was not; and
- b) did not take account of the strategy and the forecasts contained in the strategy of the need for additional secondary school places in the area.

I will look at both of these aspects in turn.

24. The consultation letter is not long and I have decided to re-produce the substance of it here. The proposal to reduce the PAN from 250 to 225 is clearly stated. The letter explains that the objectives of the proposed reduction is:

- *“To ensure the efficient and effective deployment of public resources by creating a stable student admissions (sic) in year 7.*
- *To help secure an appropriate environment for our curriculum provision.”*

25. The letter continues to say that *“the numbers on roll have fluctuated but have not been at current PAN (1250) at any point in the recent past,”* followed by:

| | |
|---------------------|--------------|
| <i>“Autumn 2017</i> | <i>1208</i> |
| <i>Summer 2017</i> | <i>1174</i> |
| <i>Spring 2017</i> | <i>1176</i> |
| <i>Autumn 2016</i> | <i>1189</i> |
| <i>Summer 2016</i> | <i>1187</i> |
| <i>Spring 2016</i> | <i>1183”</i> |

26. These figures are followed by a section headed *“Reasons for the proposed changes”* which says:

“The reasons for proposing an amendment to Year 7 PANs are as follows:

- a) *Variations in Key Stage 3 year group sizes (and year-on-year surplus places) have made it difficult for the school to plan strategically (both financially and in curriculum terms). The current PAN of 250 in Year 7 has led and will continue to lead to a lack of operational certainty from one academic year to the next*
- b) *Priory School wishes to set a Year 7 PAN which will allow it to plan with greater confidence and a better degree of accuracy. Fluctuating admission numbers (well below the PAN) from one September to the next has made this goal difficult to attain*
- c) *The number of surplus places (the difference between the PAN and the actual admitted number) in each year group (as they progress through Key Stages 3 and 4) leads to casual in- year admissions; short term teaching and operational management arrangements;*

and disproportionately high unit costs (to ensure additional capacity is in place to anticipate possible in-year fluctuations in numbers)

d) *Whilst the initial number of those who express a choice for a Year 7 place at Priory School in the period prior to admission is high (including first choices), the number arriving the following September has always been below the PAN (in recent years there has been a significant fall between first choices (expressed at the time of application) and those arriving in September)”*

27. I have quoted the bulk of the letter verbatim, but have substituted the letters a) to d) for the bullet points in the original purely for ease of reference.
28. In considering the letter, I note first that it is actually referring to the capacity of the school when it refers to 1250, not the PAN. The PAN is the admission number for entry to the school at the normal age of admission which in the case of this school is Year 7 (Y7). The school's capacity is set out in its funding agreement with the Secretary of State and is recorded as 1250. This is also the capacity stated on the DfE's '*Get Information About Schools*' website. For a school such as this with five year groups, a capacity of 1250 is consistent with a PAN of 250. On this basis, I am satisfied that it is appropriate to consider the capacity of the whole school to be 1250. The consultation letter is accurate in the sense that the school has not in that period reached the school's capacity of 1250.
29. However, if the PAN were at 225 as the school is proposing then the school is likely to admit 1125 over five years. This is a lower figure than for any of the numbers on roll provided. It was unlikely to be clear to a reader of the letter that the numbers of children admitted to the school were proposed to be fewer than it currently contains.
30. The number of children at the school in autumn 2017 was 1208. This, given the capacity of the school at 1250, is only 42 children below that capacity across five years and just over three per cent surplus places. This is a reasonable number of surplus places.
31. It is clear from the consultation letter what the school is proposing and why. However, it is much less clear about the effect the proposed reduced PAN would have on the meeting of parental preferences for places at the school and the supply of places in Portsmouth as a whole. These are two separate but, in this instance, related issues.
32. The local authority has provided me with a copy of the letter that it sent to the school responding to the consultation and objecting to the (at that point proposed) reduction in PAN. This letter provides the number on roll per year group between 2014 and 2017 as in Table 1 below. This is relevant to my consideration of the consultation letter as it gives details of the numbers on roll in each year group and across the whole school in recent years.

Table 1: numbers on roll by year group as provided by the local authority in its objection

| School year | Number of students in year group based on October census | | | | | totals |
|-------------|--|--------|--------|---------|---------|--------|
| | Year 7 | Year 8 | Year 9 | Year 10 | Year 11 | |
| 2014/15 | 238 | 250 | 215 | 246 | 249 | 1198 |
| 2015/16 | 259 | 238 | 243 | 215 | 246 | 1201 |
| 2016/17 | 246 | 246 | 237 | 240 | 220 | 1189 |
| 2017/18 | 243 | 242 | 244 | 232 | 246 | 1207 |

33. As table 1 shows, every year group currently attending the school is larger than the 225 PAN set for 2019. The evidence shows that some of the children who are now at the school would not have gained a place if the proposed PAN was in place. This would not have been clear to many people reading the consultation letter. It would be possible to adduce this from dividing the total numbers on roll (which are given in the consultation letter) by the number of year groups but I do not consider that parents and other interested parties should have to carry out such calculations in order to know the potential impact of what is proposed.
34. Indeed, I think that the consultation letter may have given parents the impression that the changes would not affect the chance of their children gaining a place at the school. The consultation letter says numbers “*have not been at current PAN (1250) at any point in the recent past.*” Leaving aside the conflation of the terms ‘PAN’ and ‘capacity’, on average the school has admitted 246 or 247 children in each of the past four years. This is both close to PAN and significantly higher than 225. The total numbers of pupils in the school have indeed been lower than its total capacity, but that is a different matter, which I come on to consider below
35. The school knows, of course, how many children have been admitted each year and the total numbers on its roll at any time; it provided the numbers in the census information which were used in table 1. It is unfortunate that the school did not provide the figures which showed its actual intake when it was consulting on reducing that intake. In particular, the consultation did not explain that the proposed PAN was at least 13 children fewer than the lowest number actually admitted to any Y7 cohort in the past four years. A parent or other interested person reading the consultation would not have been likely to have appreciated this important point from the consultation letter. Indeed, the consultation letter refers to “*fluctuating admission numbers (way below PAN) from one September to the next.*” The numbers are not, in my view, in any meaningful way “*way below PAN.*” This is an inaccurate and misleading statement.
36. I note that reducing the PAN to 225 would, over time, reduce the maximum number on roll at the school to 1125 (based on a reduction of 25 fewer children in each year group if the PAN continued to be 225). Table 1 shows that there are currently more than 1125 in the

school and have been for at least four years. The consultation letter has made statements which I consider would lead a reasonable person to conclude that the school is significantly undersubscribed. The facts do not support the statements made by the school. I consider that this makes the consultation incomplete and misleading.

37. I will now consider the local authority's point that the school did not include in its consultation letter any information drawn from the local authority's strategy on the forecast demand for places in the area. The local authority's complaint includes that the consultation letter did not make clear the context of rising numbers of children in the area and the consequent need, in the local authority's view, to ensure the availability of all existing capacity and expand that capacity.
38. The arguments here as to whether the school's consultation was misleading and incomplete because it did not include information about the forecast shortage of places are more finely balanced. On the one hand, the school knew about the forecast demand because it had been consulted by the local authority on the strategy. The school has not argued that it was unaware of the strategy or the local authority's concern to ensure an adequate supply of places. I consider that the school therefore knew that a shortage of places was forecast and that the local authority was seeking to increase the number of places. The local authority's argument that it should have reflected that position in its consultation has force. Clearly, if there is a forecast shortage of places then reducing the number of places further will exacerbate the anticipated shortage. The letter gives the impression that there are too many school places now and gives no indication that this is expected to change in the near future.
39. On the other hand, the school has argued that it is not responsible for planning school places in the area or for securing the provision of such places. I also note that the local authority was consulted and was able to respond with its arguments as to why the PAN should not be reduced. And, in the case of admission arrangements, there is opportunity to object to the adjudicator as the local authority has done.
40. I have also had it in mind the consultation letter does not say that there is a risk that children who would like to go to the school may not be able to do so because there is going to be an anticipated shortage of places in the area and that the risk would be increased if the PAN is reduced. I have also taken into account that referring to the forecast is not the same as endorsing or accepting it. It would have been open to the school to have referred to the forecast shortage of places but say if it thought the forecast was wrong or why, against that background, it wished to reduce its PAN. It did not do so. I have therefore concluded on balance that the consultation letter was incomplete and misleading because it did not refer to the forecast shortage of places.
41. I have explained above that I consider the consultation to have been incomplete and misleading both because of the impression it gave

about the level of surplus places and demand for places at the school and because it did not refer to the forecast shortage of places in the area. I therefore uphold the first part of the objection that the school failed to consult effectively because the information provided was misleading and incomplete.

42. I will now consider the second part of the objection, which was to the reduction in the PAN from 250 in previous years to 225 for 2019. Admission arrangements, including the PAN, must be determined each year. However, paragraph 3.3 of the Code prohibits certain types of objections. One such prohibited objection is to an own admission authority's determining to keep the same PAN. The local authority can object (as it has done) to the decision to reduce the PAN for 2019. If I do not uphold the objection and the PAN remains at 225 for 2019 and is set again at that level for 2020 then the local authority would not be able to make an objection. If the decision to reduce the PAN means that there are insufficient school places available in the area then this has serious implications for the local authority. I consider these in more detail below.
43. The minutes of the meeting on 6 February 2018 at which the trust determined the arrangements for 2019 note that the local authority had objected to the reduction in the PAN "*on the grounds that they are short of secondary places in the city.*" There appears to be no consideration of the implications of this but the school has said to me that it had met with the local authority before the formal consultation on the arrangements "*in the spirit of close and co-operative working*" and signalled its intention to reduce its PAN because of the condition of some of its classrooms. The trust set the PAN at 225 for 2019 in the knowledge that the school expected to admit around 250 children in 2018.
44. As established above, the school has more students in every year group than the 225 planned for 2019; the only year groups that are near to the 225 PAN planned for 2019 are Y10 (Y10) and Year 11 (Y11). Y11 is leaving now and Y10 will have left before September 2019. I note that a university technology college (UTC), which admits children from Y10, opened in September 2017 and this may be having an effect on numbers in Y10 and Y11. The school told me that it anticipated admitting 249 children in September 2018. This is one less than its PAN of 250 and 24 more than the PAN set for 2019. The school is not undersubscribed in Y7 in any meaningful way and the numbers being admitted shows the demand for places.
45. The strategy, outlined above, forecasts the demand for secondary school places in the local authority area as in table 2 below.

Table 2: available places and projected numbers

| | 2019 | 2020 | 2021 | 2022 | 2023 |
|------------------|------|------|------|------|------|
| Sum of secondary | 2103 | 2103 | 2008 | 2008 | 2008 |

| | | | | | |
|---|------|------|------|------|------|
| school PANs (as for 2018) | | | | | |
| Forecast number of Y7 places needed | 2065 | 2068 | 2150 | 2134 | 2189 |
| Surplus/deficit | 38 | -60 | -142 | -126 | -181 |
| Surplus/deficit with Priory PAN at 225 from 2019 | 13 | -85 | -167 | -151 | -206 |

46. Table 2 shows the sum of secondary school PANs in the local authority area is set to reduce by 95 from 2021. The strategy said that some Portsmouth secondary schools have raised their PANs for some years to help meet the demand for school places but cannot sustain this in perpetuity. For example, Portsmouth Academy, has increased its PAN to provide the needed places for Y7 for each of three years but does not have the space to sustain an increased PAN for the next five years.
47. Forecasts of the demand for places are just that. The actual outcome can be different for a variety of reasons. However, the overall trend of an increase in demand, beyond the capacity available for secondary school places, is clear in table 2. Table 2 also forecasts that there will barely be enough secondary school places in 2019 for the local authority area and there will not be enough places in 2020 unless action is taken. The removal of 25 places increases the difficulty.
48. The strategy states the intention to meet the demand for places by expanding existing schools. As part of the strategy, the local authority has undertaken feasibility studies on all of the secondary schools to see what expansions can be achieved to meet the forecast deficit. Priory School is the biggest secondary school in the local authority area. The school described itself as operating on a “*very small, constrained site*” and the feasibility study did not identify any opportunity for expansion.
49. The statutory duty to secure the provision of school places for an area rests with the local authority for that area and is set out in section 14 of the Education Act 1996. Where a local authority identifies a need for additional school places in order to meet this duty, it can make a case to the DfE for capital funding for what is called ‘basic need’ for school places. Capital funding allocations are made to local authorities to meet the cost of providing such new school pupil places whether by expanding existing maintained schools, free schools or academies, or by establishing new schools.
50. It is important to be clear about the basis for determining the need for new places. Funding for new places is only provided where the

existing capacity of publicly funded schools is below the level of projected need for places. Capacity in this context is not calculated by multiplying the PAN for each school by the number of year groups. Instead it is calculated by reference to the 2017 School Capacity Survey (SCAP). In this case, this means that the number of places at the school would be counted by the DfE as 1250 even if the school reduces its PAN and were not making that number of places available. This in turn means that the local authority would not be eligible for basic need funding to cover the “gap” between the number of places provided in the school if its PAN were 225 and the capacity of 1250. This gap would be a total of 25 x five year groups or 125 places.

51. The consequence for the local authority would be that it would need to find other sources of capital funding to provide the 125 places removed by the PAN reduction. In these circumstances I need to consider the need for school places over time, not just for 2019.
52. The school has argued that it *“is not responsible for delivering secondary school places across an LA. We have no control over the allocation of capital funding, basic need funding and no control of place planning.”* The duty to secure the provision of schools does rest with the local authority. The school, by opting to reduce the number of places it will offer, however, is undoubtedly affecting the provision of places in the area and thus having an effect on the local authority’s options and ability to discharge its duty. A school reducing the number of places available will affect school place planning.
53. In the local authority’s response to the consultation it provided a table showing the forecast for the *“Priory Planning Area.”* The planning area is based on the school’s catchment area. The forecast for Y7 takes into account the numbers of children attending a feeder primary school and that a proportion, based on previous trends, will chose to attend school elsewhere. This data shows strong evidence that there is a demand for at least 250 secondary school places in Y7 for children living locally to the school until 2023. For 2019 it shows a likely demand for 274 places.
54. The evidence also shows that from 2019 there is a growing pressure on secondary school places across the local authority area with a potential deficit of places without the actions outlined in the strategy to expand other schools. Portsmouth itself is relatively compact, particularly in Portsea Island where the school is situated and there are eight secondary schools in Portsea Island. However, the evidence shows that there will not be sufficient school places across the local authority area in 2020.
55. The school is the most southerly of the secondary schools on the island and it is on the northern edge of its catchment area; if, as seems likely, the school were to be oversubscribed by those living in the catchment area then it will prioritise on the distance from the home to the school. Those living to the south of the catchment area are

therefore least likely to be allocated a place if the school were to be oversubscribed.

56. Eight of the ten secondary schools in Portsmouth give priority to children living in their catchment areas. The forecasts show that they will all be oversubscribed. The two schools without catchment areas are oversubscribed for 2018 and this is expected to continue. If the forecasts are accurate then children living on the southernmost tip of the island, and thus in the most distant part of its catchment from the school, are unlikely to gain a place there because the school will reach capacity from children living in its catchment area but closer to the school. It is likely that these children would not be admitted to the other secondary schools in the local authority area because priority is given to those living in their catchment areas and all schools are expected to be oversubscribed. The child would have a journey of about 12 kilometres (by car) to a school outside the local authority area. I do note that there are also rail links. However, creating a situation in which children may have to travel significant distances and past other schools in part because of a reduction in PAN at their catchment area school would require substantial justification.
57. Against that background, I have considered the school's reasons for reducing its PAN. My sources are the consultation letter, the minutes of the meetings of the school and the trust where this was discussed and information provided to me by the school in response to my questions.
58. The school's reasons are, in fact, set out clearly in the consultation letter. To the extent that the reasons relate to spare capacity in the school, I have already found that these are somewhat exaggerated and, based on the local authority's forecasts, which the school has not challenged, any spare capacity on entry to Y7 will be removed over the coming years. This leaves the school's concerns that the site is small, the number of students high and the school has limited capital so would prefer to "*rationalise our offer to ensure we can continue to provide an optimal education to our students.*" I note that in its responses to the objection the school has focused its responses to the objection on matters relating to the size of the site and the quality of the accommodation.
59. I do not underestimate the difficulties of significant movement of children with large numbers being admitted and leaving during the school year. Such turbulence creates extra work, can cause disruption and makes planning difficult. However, the evidence shows that the school is likely to be full on entry at Y7 and it is not appropriate to find a means to prevent children joining a school on the basis that they may leave later.
60. The school told me, "*The consultation to reduce PAN reflects the concerns over the levels of congestion that the school has to manage daily in an environment woefully underfunded and dominated by*

Victorian buildings without capital funding for a decade or more.” The school has explained that looking after the grade one listing of part of the building incurs additional expense. The school further describes its disappointment that external capital funding has not been invested in the school to address the poor quality of its buildings and facilities. The school told me of various problems relating to the teaching of practical subjects such as music, science and technology and said, “A number of science laboratories will need to be closed as they are not fit for human occupation and their removal further exacerbates the pressure on school.” This particular concern was also recorded in the minutes of the meeting where the trust made the decision to reduce the PAN. As part of the discussion the minutes of that meeting on 2 February 2018 recorded, “Portsmouth LA had funded significant building projects at every other secondary school in the City, but had not been able to fund any capital works much needed at the largest school in the city!”

61. I note that the strategy also raises the condition of many of the schools as a concern. The responsibility for funding capital works in an academy, beyond those created by the basic need for places, is through devolved formula capital (DFC) which provides academy trusts with capital funding to address their own priorities. There are also grants for more major works for which applications can be made to the Education, Skills and Funding Agency (ESFA); no local authority is funded for such works in an academy.
62. The school explained that *“In 2015 and 2016 Priory applied for Capital funding through Condition Improvement Fund and received one payments for two roofs. We now apply for SCA (school condition allocation) funding to the Trust and as one of seven schools we bid for capital funding. In 2017 we received £100,000 for windows. Even in the unlikely event that we were to receive sole allocation of the full amount it would not cover our current needs.”* The school has indicated serious concerns about the condition of its science rooms and has no external funding anticipated or sufficient to meet these needs.
63. The local authority explained, *“Whilst there may be condition issues in relation to the science classrooms, the responsibility to address this lies with Bohunt Education Trust. The Trust receives a capital maintenance allocation from the ESFA in the same way as the Local Authority receives an annual allocation for its maintained schools.”* The school has been a member of the Bohunt Education Trust since 2014. The local authority further explained that the capital works carried out at other schools had been to meet the basic need for places. The local authority has no opportunity to expand the school so it has had no means to invest in the school since 2014.
64. The school provided a paper dated 23 February 2018 which was published following the consultation and decision to reduce the PAN. The paper set out the reasons for the proposal to reduce the PAN, some information on the consultation and the responses to the

consultation. Responses were made by two parents (one in favour and one against the change), one other secondary school which supported the change and the local authority which objected. The paper describes maintaining the PAN at 250 as expanding and that an *“additional 68 students will provide more money but the site is cramped and congested as it is. The environment has received little or no investment over years, some rooms are in poor condition so the prospect of increasing roll in these circumstances seems illogical.”*

65. My understanding is therefore the school is saying that part of its premises are in a poor state of repair and that as student numbers increase with demand then it will struggle to use its capacity to the full because of years of underinvestment linked to low numbers. The strategy recorded that between 2008 and 2012 that secondary school numbers fell. Now that the numbers are increasing there is additional pressure on space and all facilities will be required.
66. The situation is therefore that the school has capacity for a PAN of 250 but its site is cramped and some specialist rooms are in poor order. The school also argues that it does not have adequate capital funding to invest in its premises. The local authority projections show that the 25 places which would be removed each year consequent on the reduction in PAN are needed in order to meet the demand for secondary school places within a reasonable distance for children living in the catchment area.
67. I can understand that there are significant challenges for the school in addressing longstanding problems of building quality. However, it is also my view that reducing the PAN so that children who live in the catchment area of the school may be denied a place at the school when the school has capacity to admit them is not right. Linked to this, it also seems to me that to remove school places from use when there is evidence that there is the need for them in the near future is unacceptable. This is because it would be necessary to use public funds to replace them and it is unlikely that the local authority would be able to access monies to fund replacing existing capacity. This would put the local authority at serious risk of failing to fulfil its duty to secure sufficient provision of school places.
68. Having considered all the evidence with which I have been provided, I have decided that there is insufficient justification to reduce the PAN of the school from 250 to 225 when there is convincing evidence that more than 225 places will be required at the school for 2019 and the following years. I therefore uphold this part of the objection.

Other matters

69. In reading the arrangements I noticed other matters that may make the arrangements unclear and/or not meet the requirements of the Code in other regards and I consider these below in the context of paragraph

14 of the Code. Paragraph 14 of the Code says, *“In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”* The arrangements must be clear.

70. Paragraph 1.6 of the Code says, *“All children whose statement of special educational needs (SEN) or Education, Health and Care (EHC) plan names the school **must** be admitted.”* The arrangements say that *“Pupils with a statement or statutory plan naming a particular school are taken account of and given priority in the allocation process.”* This does not make it clear that such a child will be admitted and so the arrangements are not clear and do not comply with the Code.
71. The Code says, in footnote 4, *“Admission arrangements means the overall procedure, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered.”* Priority 3 in the arrangements is for children living within the school’s designated catchment area but no information on the catchment area was provided when I looked at the school’s website. The catchment area is part of the arrangements and the arrangements do not comply with the Code as the admission authority has not published its arrangements as required by paragraph 1.47 of the Code. There is no information on the school’s website on the catchment area and this will make the arrangements unclear. The arrangements do not comply with the Code in this regard.
72. Paragraph 1.11 of the Code says that, *“Admission authorities **must** state clearly in their arrangements what they mean by ‘sibling.’”* The arrangements have two definitions of sibling and these are not consistent with each other. Information under “sibling links,” refers to a brother or sister already on roll of the school applied for *“or at an adjacent infant/junior school and who will still be attending the school the following year.”* This does not make sense in the context of the school and therefore the arrangements are unclear in this regard and so do not comply with the Code.
73. Distance between the home and the school is used in the arrangements to determine priority. Paragraph 1.13 of the Code says, *“Admission authorities **must** clearly set out how distance from home to the school will be measured, making clear how the ‘home’ address will be determined and the point in the school from which all distances are measured.”* There is considerable information provided in the arrangements on how distance is measured but it is not clear to the reader from what point in the school all distances are measured. It is possible that, as the arrangements say, *“home co-ordinates will be derived from the Local Land and Property Gazetteer, with Ordnance Survey’s ADDRESS-POINT product use as support,”* does say how the home address will be determined. It is not clear what it means. For

example, it is not clear whether the home address is measured from the centre of the property or the front door. The arrangements are not clear in this regard and do not comply with the Code.

74. Paragraph 1.13 of the Code continues to say, "*This (the explanation of how distance will be measured) should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent.*" There is no such information in the arrangements and so they do not comply with the Code in this regard.

75. Paragraph 2.17 of the Code explains that parents may wish their child to be admitted outside their normal age group and says, "*Admission authorities must make clear in their admission arrangements the process for requesting admission out of the normal age group.*" There is no such information in the arrangements and so they do not comply with the Code in this regard.

Summary of Findings

76. The consultation undertaken by the school was incomplete and misleading. This was because:

- a) the consultation letter contained partial and misleading information giving a misrepresentative impression about the numbers joining the school in recent years; and
- b) information the school had on the demand for school places and the anticipated lack of places in the area was not included.

77. I have accordingly upheld the objection to the consultation.

78. The school has capacity for a PAN of 250 but set a PAN of 225 for 2019 because:

- a) it has had surplus places creating some turbulence with children joining and leaving the school creating additional strain on resources; and
- b) of the poor quality of some of its specialist provision and its constrained site.

79. The local authority has forecast that there are insufficient secondary school places in the local authority area to meet future demand. The lack of places would be exacerbated by the reduction in PAN of the school by 25 places which would lead to the removal of 125 places over time.

80. I therefore uphold the objection to the reduction in PAN on the grounds that:

- a) it is unreasonable to remove places which are forecast to be needed. Such removal would lead to the spending of public

- money with no net gain in places. Such expenditure would not, of course, be supported by DfE funding allocations; and
- b) it is not right to expect children to travel long distances to other provision when there is capacity locally.

81. There are other matters as described above which do not comply with the Code which mainly relate to missing information and a lack of clarity. The Code requires the school to revise its arrangements to address these matters.

Determination

82. 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 Bohunt Education Trust for Priory School in the local authority area of Portsmouth City Council.
83. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.
84. 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.

Dated: 4 September 2018

Signed:

Schools Adjudicator: Deborah Pritchard