



## Determination

<b>Case reference:</b>	<b>ADA3526</b>
<b>Objector:</b>	<b>London Borough of Sutton</b>
<b>Admission authority:</b>	<b>The Governing Board for Overton Grange School on behalf of the Overton Grange School, in the London Borough of Sutton</b>
<b>Date of decision:</b>	<b>4 October 2019</b>

### Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the reduction in the PAN for September 2020 from 240 – 210 determined by the governing board of Overton Grange School for Overton Grange School, Sutton.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform to 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 school must increase its PAN to 240, and make revisions to the definition of 'home address' and Oversubscription criterion iii) within this timescale.

### 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 the London Borough of Sutton (the objector) about the admission arrangements (the arrangements) for Overton Grange School (the school), an academy school for pupils aged 11 – 18 for September 2020. The objection is to the arrangements for admission of pupils to Year 7 (Y7), and concerns a reduction in the published admission number (PAN) from 240 to 210.

2. The local authority (LA) for the area in which the school is located is the London Borough of Sutton which is also the objector. Other parties to the objection are the governing board of the school.

## **Jurisdiction**

3. The terms of the academy agreement between the Academy Trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing board of the school, which is the admission authority for the school, on that basis. The objector submitted an objection to these determined arrangements on 2 April 2019. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

## **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 2 April 2019 and further email correspondence;
- b) the admission authority's response to the objection and supporting documents;
- c) the LA's composite prospectus for parents seeking admission to schools in the area in September 2019;
- d) confirmation of when consultation on the arrangements last took place;
- e) copies of the minutes of the meeting of 19 March 2018 at which the governing board of the school determined the arrangements;
- f) a copy of the determined arrangements; and
- g) the determination ADA3437 of the adjudicator referred to me by the LA.

## **The Objection**

6. This objection which has been submitted by the LA is to the reduction in the school's PAN for entry in Y7 in September 2020 from 240 - 210.

## Other Matters

7. Since the arrangements have been brought to my attention, I have identified some other matters which do not conform to paragraph 14 of the Code. These are:

- The definition of “*home address*”, which operates unfairly in respect of some applicants; and
- The meaning of oversubscription criterion iii), which is unclear.

I have set out paragraph 14 of the Code in my consideration of these other matters, and explained my concerns in more detail. The school has helpfully acknowledged these concerns and has undertaken to take them into account when it next revises the arrangements. I am grateful to the school for its cooperation. The necessary revisions are to be made within two months of the date of this determination if they have not been made already.

## Background

8. The school is a co-educational, non-selective secondary school for pupils aged 11 – 18. It converted to being an academy in 2011. The school has been rated as ‘*Good*’ in all categories by Ofsted, and is situated in the south of the London Borough of Sutton. It was originally opened in 1997 to meet the demand for extra students in the South Sutton area. It is the Designated Base for Hearing Impaired Students in the area, and the school also admits many physically disabled students.

9. The oversubscription criteria are as follows:

- i) *Looked After Children and previously Looked After Children. (Supporting evidence of status will be required).*
- ii) *Where there are supported medical reasons or exceptional social reasons why a child should attend a particular school. (Refugees and Asylum Seeking children may be included under this criterion, depending on individual circumstance. Supporting evidence of status, where applicable, will be required from a social worker, health visitor, housing officer or other relevant council officer).*
- iii) *Where a sibling will be in the school, up to and including Year 13, at the time of admission. If within this category there are more applicants than places available, any remaining places will be offered on the basis of proximity of the child’s home address to the school (please see section 9).*
- iv) *Children of permanent staff where:*
  - a) *The member of staff has been employed at the school for two or more consecutive years;*

b) *The member of staff is recruited to fill a vacant post for which there is a demonstrable skills shortage.*

v) *Remaining places will be offered on the basis of proximity of the child's home address to the school. The point within the school to be used in any distance calculation will be the main entrance to the school building. Distances will be measured in a straight line from the child's home address, with those living closer to the school receiving the higher priority".*

10. Upon becoming an academy, the school increased its total planned capacity to 1480, including a sixth form of 280 places. This meant that 1200 places were available for pupils in Y7 to 11 inclusive, which would be consistent with a PAN of 240. In the years 2016/17, 2017/18, and 2018/19, 240, 240 and 260 places were offered. However, the October Census numbers on roll in in Y7 in those years was as follows: 234, 238 and 197, suggesting a fall in numbers on roll as compared to the number applicants who were offered a place. There are currently a total of 1,217 pupils on roll (based upon January 2019 census), and 1044 of these pupils are in Y7 - 11. The PAN reduction objected to by the LA has been introduced for the 2020 admission arrangements.

## Consideration of Case

### The objection

11. I am grateful to the parties for the clarity and comprehensiveness of their submissions. The school conducted a consultation prior to amending its arrangements to reduce the PAN. The LA was consulted and objected to the proposed PAN reduction on the basis that the pressure for secondary school places in the local authority area will be significant in 2020. As a result, the proposed PAN reduction would threaten the LA's ability to meet its statutory responsibility, as set out in section 14 of the Education Act 1996, to ensure sufficient school places in the Borough. The LA said that "*When considering reducing a PAN, admission authorities should consider the need for places in the area. The Local Authority is of the view that the Academy Trust is reducing secondary places when there is basic need and that to do so would not be in the interests of parents and families in the local area. The school has capacity to continue to admit up to 240 pupils per year and there is parental demand for places in the area served by the school*". The school took into account the LA's objection, but nevertheless proceeded to reduce the PAN for Y7 entry in September 2020 to 210. The LA therefore lodged a formal objection to the adjudicator.

The LA has helpfully set out a table of the places required in previous years and the projected places required across the Borough. This is set out below. It shows a significant shortfall of 301 places for admission in September 2020, which continues to increase going forward until 2024/5, when the shortfall begins to reduce, although it does increase again in 2026/7.

Year	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27
Yr 6	2023	2100	2284	2399	2549	2567	2570	2629	2519	2430	2551
Yr 7	3098	3162	3326	3479	3615	3633	3637	3698	3583	3490	3617
Proj PAN <sup>1</sup>	3099	3099	3314	3314	3314	3314	3314	3314	3314	3314	3314
+ / -	1	-63	-24	-165	-301	-321	-323	-384	-269	-176	-303

12. A significant point which is relevant to this objection is that a new academy secondary school (Harris Academy) opened fairly recently, and is situated in close proximity to Overton Grange. It has added 215 Y7 places to the total available, and these additional places are included in the table above. I will explain the significance of this in more detail later. Also significant is that there is an intention to open a new academy secondary school in the north of the borough in Rosehill. The intention is that the Y7 PAN for the new school in Rosehill will be 240. At the time of the objection and of initially considering this determination, it was uncertain as to when this new school would open. There was a possibility that the school would open in temporary accommodation for admissions in September 2020, however I was notified on 20 September 2019 that the planning application for the proposed new school had been refused. **The LA's projected figures in the table above do not include the proposed PAN for the new school.** The LA has predicted an increased shortage of places in September 2020 of 301 (approx.). The reduction in PAN at Overton Grange will reduce the collective PAN in the Borough to 3284 making an expected deficit overall of 331 places.

13. The LA said in its response to the consultation on the proposed PAN reduction:

*“A new school, Harris Academy Sutton, opened in September 2018 on a site about 0.5km away from the existing Overton site. Overton Grange are understandably concerned about the impact Harris Academy Sutton has and will have on their intake. In 2018/19 (the year the new school opened) the school were recorded as having 197 on roll for 240 available*

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<sup>1</sup> That is the total number of Y7 places expected to be available

*places (October 2018) Census. The school are concerned that they will be undersubscribed in future years too.*

*The Local Authority would accept that, whilst absolutely necessary to meet basic need, the opening of Harris Academy Sutton will have had an impact on the patterns of applications for Overton Grange in 2018/19 and 2019/20 by virtue of its location and proximity. That said, the relative number of unfilled places across the Borough in 2018/19 remains very low. Based on October 2018 census data there were 3326 pupils on roll in a Year 7 place in the Borough against a collective PAN of 3314. Given that there is a deficit of places against PAN, the unfilled places in Overton Grange may be as much about local schools offering places above their PANs (where the LA didn't request this for basic need reasons) or schools having to admit additional pupils on appeal, rather than the additional places created by the new school.*

*Local Authorities have a duty to provide a sufficiency of places but there is also a duty to provide parental choice, diversity and fair access. Many Local Authorities plan for a 5% surplus in capacity to allow for these duties to be fulfilled. Whilst Sutton does not seek to adhere to this policy per se (this would be the equivalent of 165 unfilled places in Year 7 this year), the Council considers it reasonable for there to be some spare capacity in the system, indeed it is necessary to ensure that the Council can offer choice as well as provide for in-year demand should it arise. This is fairly well established national practice.*

*Given the pressure on places, an additional secondary free school is due to open in Sutton, "Sutton Free School 1". As has been discussed with Overton Grange, to some extent the Local Authority's view on this proposal [sic to reduce the PAN] heavily depends on the likelihood of Sutton Free School 1 opening in 2020 in temporary accommodation ahead of the main school opening in 2021 (the current planning scenario the DfE and the school provider are working to). If this were to be assured this would create 240 additional Year 7 places in the Borough and the LA would have far less cause for concern from Overton Grange School determining to reduce PAN, but the opening of the new school is far from assured and is not in the control of the Local Authority. Whilst a site has been identified and secured, a planning permission has not and is unlikely to be achieved until later in the year (if it is successful). Should Sutton Free School 1 not open in 2020 it is likely that the Local Authority will need to work with secondary schools to try and create additional places on a short term basis - something that is getting increasingly difficult to do and presents significant risk given all secondary schools in the Borough are their own admissions authority.*

*The Local Authority recognises that the school is concerned about unfilled places, the financial impact of that and, pupil mobility in year and it is recognised that the school have written to the LA to guarantee that they would over-offer back to the original PAN of 240 if the need can be demonstrated, however this is not binding and it would leave the Local Authority in a more vulnerable position than it is already.*

*The Local Authority is of the view that the school should consider any reduction in PAN only once the position on Sutton Free School 1 is better understood. Decisions on whether the*

*new school will open in September 2020 will likely be taken by the DfE and Greenshaw Learning Trust later on in the year”.*

14. I pause here to note that, if the school had not reduced its PAN by revising the admission arrangements, it could have reduced the PAN at a later stage by applying to the ESFA for a variation. The disadvantage of taking this latter course of action is that the proposed change would not have to be consulted upon; it would have created a prolonged period of uncertainty for the school; and would have been subject to the approval of the ESFA which cannot be guaranteed.

15. Clearly the LA is mindful to some degree of the difficulties caused to the school following the opening of Harris Academy, but at the time of making this objection the LA was understandably concerned about the level of the projected shortfall and its possible inability to provide sufficient secondary school places. In view of the uncertainty of the situation regarding the new Sutton Free School 1, my office made enquiries of the Local Authority’s Planning Department, and was told on 20 May 2019 that no planning application had been received for the new free school. The Planning Department confirmed that, once an application is received, it takes within 13 – 16 weeks for planning permission to be granted. Enquiries of the Department for Education yielded the following response: *“The opening date for Sutton Free School 1 has not yet been agreed. Completion of the permanent building is some way off and a planning application for the permanent building is due to be submitted shortly. However, as the London Borough of Sutton says it needs additional secondary places in September 2020 to meet local demand, we are considering whether to open the school in temporary accommodation in 2020. We, along with the local authority and the Greenshaw Learning Trust, which would run the school when it opens, are currently looking at the feasibility of doing so”.*

16. In light of the above, the position was uncertain as to whether the proposed new free school would open in September 2020 when I initially began to consider this objection. The LA said at the time: *“Whilst there is a possibility of the DfE opening the new school Sutton Free School 1 in temporary accommodation by September 2020, there is a significant risk that this will not happen because it is contingent on them achieving planning permission for their planning application on the main site by October/November. Based on the pre-planning discussions I have been party to between the Local Planning Authority and Wates (the DfE approved contractor who are delivering the scheme), this risk remains significant”.* Because the position regarding the new free school was uncertain, I proposed to the parties that I should delay making a determination of the objection until a decision was made in relation to this. As I have said above, I was notified on 20 September 2020 that the application for planning permission for the new free school had been refused. The LA informed me that it has had written confirmation from the Greenshaw Learning Trust that they would not agree (as the free school provider) to open the school without the permanent planning permission in place. The LA had also sought written confirmation of the DfE’s position from the DfE (as did my office). At the time of writing this determination, this has not yet been received. However, as the LA says, even if the DfE did agree that the temporary school could open, this could not happen unless the free school provider changed its position. With respect to how long it would take to appeal the refusal of

planning permission, the LA considered that this is likely to be determined by an inquiry or a hearing rather than written representations, and that this is likely to take in excess of 40 weeks. The LA consider, therefore, that it is highly unlikely that the proposed new school will operate from temporary accommodation with effect from September 2020. I agree with the LA's conclusion. I also note that the prospect of the new free school opening in permanent accommodation in September 2021 is also uncertain at this point in time, and unlikely to be decided until July/August next year if the LA's 40 week time estimate is correct.

17. The LA has informed me (and the school has confirmed this several times) that the school has provided a written guarantee that it will *“over-offer back to the original PAN of 240 if the need can be demonstrated”*, however the LA is concerned that this guarantee is not binding and it would leave the LA in a more vulnerable position than it is already if the school did not honour this guarantee. The LA says *“The Local Authority is of the view that the school should consider any reduction in PAN only once the position on Sutton Free School 1 is better understood.”*

18. The LA has referred me to ADA3437 in which Portsmouth City Council objected to a PAN reduction for the Priory School. Previous determinations do not set binding precedents for adjudicators in their consideration of subsequent cases, and the circumstances of each objection and determination are different. Nevertheless I have read this determination carefully. The objection was upheld. There had been an unprecedented rise in pupil numbers at primary level, and so Portsmouth Council had developed a strategy to make sure there were sufficient secondary school places as these children moved forward from primary to secondary school. I refer in particular to paragraphs 42, 44 and 47 of the determination which say:

*“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....*

*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...*

*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”.*

19. The adjudicator’s conclusion was as follows: *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”.* I have highlighted the words ‘at the school’ here to emphasise them. I am prepared to accept, from the evidence provided by the LA that there will be a shortfall of places across the Borough for 2020 admissions, what is less clear in this particular case is whether there will be a need for 240 places at this school. The circumstances in ADA3437 are similar to the present case insofar as there was a predicted shortfall in secondary places going forward across the local authority area as a whole. But the facts of this case are also different in a number of significant respects. Overton Grange was undersubscribed in 2018 and is undersubscribed in the current year, albeit that there was, and is, a shortage of available places across the Borough in both of these years; the position in relation to the shortage of school places in future years will improve when the new free school opens (although it now appears that this will be in September 2021 at the earliest); and the school has given a guarantee that it will offer 240 places in 2020 should the need arise.

20. The school initially responded to the objection on 22 May 2019. In the response, it was explained that the school had made offers of 240 places in 2016 and 2017. Places were taken up because there was a slight increase in the number of students living in the south of the borough, although the school says that the substantial increase has always been in the north. This was before Harris Academy was built. The school says that students do not tend to travel between the north and south of the Borough due to transport issues. The school has always predominantly taken its pupils from the south of the Borough or from Surrey. Therefore, because Harris Academy is in the south, the effect of its opening has, in the school’s opinion, been to reduce the number of applications to Overton Grange. Indeed, the school tells me it had objected to the opening of Harris Academy from day one because it considers it is in the wrong place. The school’s view is that the additional places available at Harris Academy have never helped the problem in the north of the Borough, however, the opening of Harris Academy has had significant adverse consequences for Overton Grange. I note in passing that finding sites large enough for secondary schools in any part of London is challenging, and schools must perforce be located where there are such sites. However, despite offering 260 places (20 over PAN) in 2018, the school opened that year with only 197 pupils on roll in Y7.

21. The school has explained this adverse effect in more detail. Before the opening of Harris Academy, Overton Grange admitted a large number of pupils who had attended two particular primary schools, namely The Avenue and Devonshire. In 2016, the school admitted 42 applicants from The Avenue, and in 2017, the figure was 51. In the current admissions year, this number has fallen significantly so that only four places have been offered to applicants from The Avenue. Admissions from Devonshire have remained constant, with 43 applicants starting in September 2019. But Devonshire has only one class

in Year 5, which I assume can only contain a maximum of 30 children, and so the number of applications to Overton Grange School from parents of children at Devonshire will inevitably fall in 2020. This is why the governors decided to reduce the PAN for 2020.

22. The school says that although it is difficult to predict future admissions, the LA got this wrong in 2018, and that Overton Grange is not the only school with unfilled places for the 2018 intake. The school had unfilled places for 2019, however the school felt it was too late to reduce its PAN for 2019 by the time this became known. The school is rated Good by Ofsted and had always been full prior to the opening of Harris Academy. In September 2016, the school took applicants from 16 out of Borough schools. For admissions in 2019, the number has risen to 24. It appears that the school is not exclusively catering for Sutton residents for whom the Borough has a duty to secure places. The school is also admitting children who live further away, and the furthest distance from which a child lives increased from 8.562.01km in 2016 to 13.130.56km in 2019. Given the transport difficulties within the Borough, the school is concerned that, even if parents accept places at the school because they do not immediately have a more accessible option, the school will lose students as vacant places become available in schools which are easier for pupils to get to.

23. The school says that, in 2018, it “lost” the equivalent of 43 pupils to Harris Academy, and the financial effect of this was a loss of £1,261,080 in projected income (although this is acknowledged to be an over-simplification of the funding formula)<sup>2</sup>. The LA has not challenged this figure. I accept that it is an approximation, but I am willing to accept that the school will inevitably sustain financial loss as a result of admitting fewer pupils. The school proposed to reduce its PAN as part of the 2020 arrangements in order to consult on this proposal. If this had been delayed until the position in relation to the new free school had been confirmed, it would have been too late to consult on a change for September 2020.

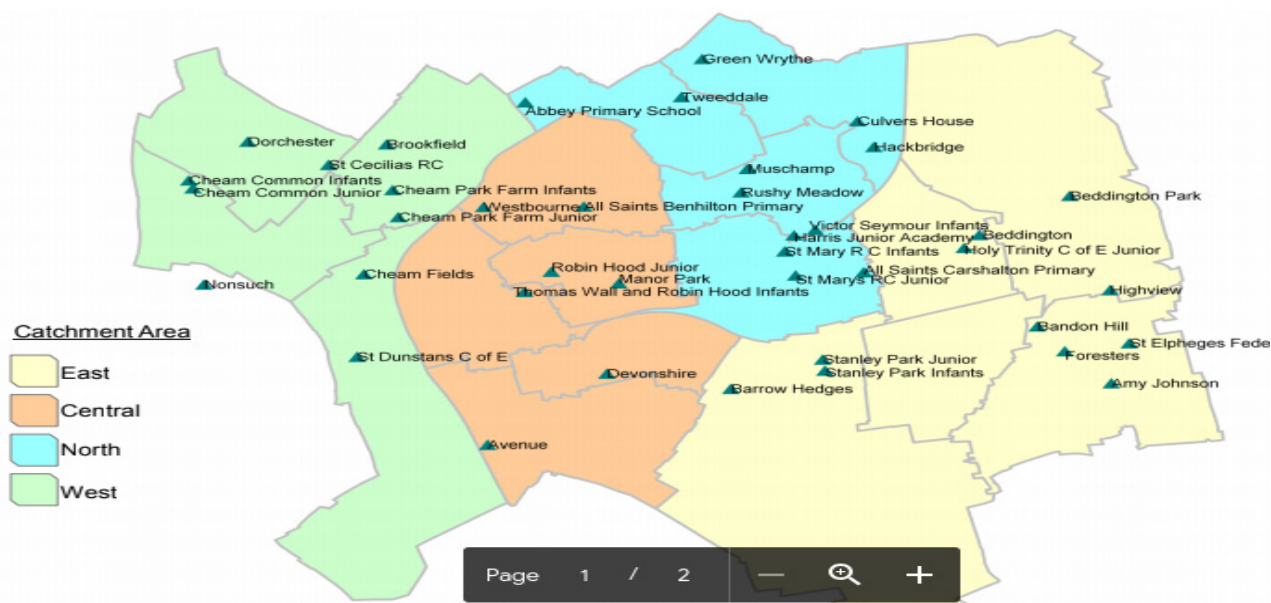
24. Finally, the school’s letter states “*We appreciate that it is difficult for the Borough to predict with accuracy future numbers, hence to be fair to them we did write to them guaranteeing that we would admit 240 students in 2020 if the need arose. Consequently we are prepared to confirm this again*”. The school has provided me with a copy of a letter dated 26 February 2019 from the school to the LA in which the school states that it is writing to guarantee that it would be prepared to go over the PAN of 210 to a figure of 240 should this be necessary. The letter states that the school received no objections to the proposed PAN reduction during the consultation process (other than from the LA), and indicates a willingness to discuss the position with the LA.

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<sup>2</sup> The figure is based upon taking the 2018/19 MFG unit value of £5032 over 5 years which totals £1,081,880, and then assuming that 20 of the 43 students had gone into the sixth form for 2 years based upon the net funding rate of £4000 per student and area cost allowance of 1.12. This would have led to an additional loss of £179,200. Total loss £1,261,080.

25. I requested that my office ask the LA if it had further points to make in response to the school's representations. The LA responded as follows:

*"The school is of the view that pupil growth in this period is in other parts of the Borough and mainly in the North. I don't share this view. The table below identifies the numbers of year 6 pupils in each of the primary schools in our primary planning areas over a period of time based on actual data - January School Census data (up to 2019, and thereafter by rolling forward year 6 cohorts from 2019 onwards). This gives a sense of where the main growth in pupils has been in the Borough over the last 6 years. The greatest area of growth has been in our central planning area. Note that we have 4 primary planning areas but operate a single secondary planning area because, as a small London Borough, it is broadly viable to attend any secondary school in the Borough from almost any location in the Borough."*



Year 6 cohorts in Sutton over the last 10 years by planning area (based on School Census data)

	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014	Change 2014- 2023
Central	720	665	652	658	621	593	493	467	438	443	277
North	641	604	639	633	593	543	505	477	529	524	117
East	641	672	653	659	635	593	578	553	553	534	107
West	454	471	468	441	407	422	414	374	394	386	68
<b>Total</b>	<b>2456</b>	<b>2412</b>	<b>2412</b>	<b>2391</b>	<b>2256</b>	<b>2151</b>	<b>1990</b>	<b>1871</b>	<b>1914</b>	<b>1887</b>	<b>+569</b>

*The school is of the view that Harris Academy Sutton is in the wrong part of the Borough. Given that the majority of the growth in the Borough (as the table above suggests) is in the area in which the new school is located, I don't agree with this statement but I would accept that the creation of a new secondary school in close proximity to Overton Grange will have an impact on their admissions.... With respect to Overton only admitting 197 pupils in 2018 and their view that the LA 'got it wrong', this should be seen in a broader context. It is not reasonable to expect Local Authorities to be able to plan school provision to the nearest pupil and to ensure that every single school fills to PAN. There are multiple factors that can influence demand for school places and the ability of a school to recruit is influenced both by the quantum of pupils in a local area as well as the popularity of the schools in that area. As stated in my response to the consultation, the collective PAN of schools in the Borough in 2018 was 3314 (including Harris Academy Sutton which opened that year) and the October census records 3326 pupils on roll. There was therefore a very good fit between demand and supply.*

*I accept that Overton did not fill to PAN but it should be noted that Cheam High School increased their PAN from 300 to 320 in 2018 (not commissioned by the LA), schools did over offer to fall back to PAN (as they do most years - though it varies year to year whether there is sufficient fall out to roll back to PAN) and appeals will also have resulted in some schools admitting above their PAN. There is also the issue whereby there is need to offer every on-time pupil a place at a secondary school on national offer day but a general 'fall out rate between March and September as places are offered and accepted/rejected. None of this is in the control of the Local Authority.*

*Whilst schools will generally not want unfilled places, it should be noted that most local authorities plan for a certain % of unfilled places in a system to allow for in year applications and to facilitate an element of choice for parents/pupils. This varies depending on the Local*

*Authority, but 5% unfilled capacity is generally considered a reasonable basis upon which to plan unfilled capacity. Sutton hasn't generally planned to this level of unfilled capacity, in part because it is conscious of the effect unfilled places can have on schools, but there are arguments against this approach as well. It is noteworthy that recent statistics published by the Department for Education show that Sutton has the lowest unfilled capacity in the secondary sector than any other London Local Authority and has the highest % of pupils attending in excess of the school's capacity.*

*(<https://www.gov.uk/government/statistics/school-capacity-academic-year-2017-to-2018>)*

*I would reiterate my thanks to Overton for committing to over offering in 2020 if the places are needed (and their PAN is allowed to decrease) as there remains a significant risk that the DfE will not be able to deliver the new school in the timeframes they initially envisaged. The school was initially due to open in 2019, then 2020 and now it has been confirmed that the school won't open until January 2022 at the earliest. This puts the LA, who has the responsibility to ensure a sufficiency of places, in a very difficult position because the LA is not in control of whether those places are delivered, yet have the responsibility to provide places for any shortfall if they are not. At this point in time, it looks unlikely that the DfE are going to achieve a planning permission for the new school in time to open the school for 2020 in temporary accommodation, and therefore the LA is fully expecting to need Overton to offer 240 places in September 2020. Indeed it looks likely that, although it is not our favoured option, that we will need to ask schools in 2020 to offer bulge classes in any case to meet the expected demand (as we did this year for September 2019) though this is not confirmed at this stage". I have quoted selectively from the LA's response, and have included the parts which I consider to be most relevant. I have not included the reasons why Harris Academy was situated where it is. The location of Harris Academy is a question of fact, and the relevance of its location is that the opening of Harris Academy has led to a decrease in numbers at Overton Grange. All parties accept that the opening of Harris Academy has affected the pattern of applications to Overton Grange School.*

26. The school responded by reiterating the points already made. Again, statements are made about how Harris Academy came to be located where it is, which is not my concern. The school disagrees with the LA's statement that there is a very good fit between demand and supply in the Borough, given that the school has been undersubscribed since 2017. *"Basically, we are a 'Good' school (Ofsted 2016 and 2019) and we have had a similar school to ours opened 0.5kms away from our main entrance when the bulk of demand is in the central and northern part of the 'central area'. This problem is then made worse with difficulties in transport making it difficult for students to move around easily. We accept that the Local Authority had no control over the changes at Cheam High School, but obviously this only served to compound our problems. We agree that schools will generally not want unfilled places and local authorities cannot possibly equate supply and demand perfectly. However, in September 2018 we were the only secondary school in the borough that had a considerable shortfall in number. Other schools had one or two vacancies in contrast. Again this is down to the geographical position of the Harris Academy Sutton".*

27. The response concludes: *"We do fully appreciate the difficult situation that the Local Authority finds itself in over planning permission, whether for the permanent new school or*

*temporary accommodation. Therefore, given this difficulty we have put in writing that we would commit to over offering in 2020 should we be allowed to decrease our PAN back down to 210. This offer still remains open”.*

28. In September 2019 when I was notified of the refusal of planning permission for the new proposed free school, I asked the school to provide me with up to date figures for its 2019 admissions. The school provided the following information on 30 September 2019:

- *“Despite making 330 offers, the highest we have ever made, we have not been able to reach our current PAN of 240. This is now for the second year in a run.*
- *At the start of this term we had 221 students on roll in Year 7 ie. 19 students below PAN and no waiting list. Again this is for the second year.*
- *As of the end of 30 September 2019 we have 216 students on roll in Year 7 and falling. I would anticipate based on last year, that we will settle at around 210 or slightly under.*
- *Our catchment area for current Year 7 is now 37315.58km. Again this is much larger than usual.*
- *In summary, despite a `Good` Ofsted judgement in April of this year we have not filled our PAN, we have a very large catchment area compared to the past & there are currently no students to fill our vacancies. This is despite the borough projecting a shortfall of 157 spaces for this academic year.*
- *It is noticeable that all these changes have happened, as predicted, with Harris Sutton opening very close to us in September 2018.*
- *We are obviously aware that the second proposed new school was recently refused planning permission & therefore the borough is projecting another shortfall. In response to this we would again reiterate the fact that we would be willing to go over PAN up to 240 if this helped. Our offer of putting this in writing still stands.*
- *We still feel a PAN of 210 is fair since other schools are likely to take bulge classes and in 12 months time the situation may be different again as a result of an appeal, should this be submitted by the DfE”.*

29. I have considered the representations of both parties carefully. The arguments on both sides are compelling and, as a result, my conclusions are finely balanced. On the one hand, I appreciate the challenges for local authorities in ensuring that they meet their obligations under section 14 of the Education Act 1996 in a situation where most schools within the local authority area are their own admission authorities. I appreciate that the LA will feel more confident in its ability to do this if I uphold this objection, although there is still likely to be a shortage of secondary school places.

30. On the other hand, if I uphold the objection, this risks a further year of undersubscription for a school which has been undersubscribed in 2018 and 2019, and will

sustain a significant financial loss as a result. If I uphold this objection, the school will need to plan for, and employ staff to cater for the admission of 240 pupils in September 2020, and will therefore incur further costs. I have no reason to doubt that the school genuinely does not believe that it will admit as many as 240 applicants in September 2020, particularly due to the fact that there will be an inevitable reduction in the number of applications from the parents of pupils currently attending Devonshire Primary School.

31. When I originally began to consider this objection, I was not convinced there that there was compelling evidence in this case to indicate that more than 210 places will be required at the school for admission in September 2020. If I had been provided with confirmation that the new free school would open in September 2020, I would have had far less cause for concern about the PAN reduction at the school. It now appears unlikely that the proposed new free school will open in temporary accommodation, and be in a position to admit pupils in September 2020, given that planning permission has been refused. The position remains unclear, and the earliest estimate for the opening of the proposed new free school in permanent accommodation is January 2022. If the new free school does open in January 2022 with 240 places, this will alleviate the LA's predicted shortfall for September 2022 from 323 to 83. But this will still leave a predicted shortfall of 301 places for September 2020 and 321 places for September 2021.

32. I note that, according to the figures provided by the LA in 2018/19, the shortfall was 24 places, and yet the school opened with only 197 pupils on roll which is 43 below PAN. In 2019/20 there was a shortfall of 165 places across the Borough, yet again the school again was undersubscribed (currently 216 pupils on roll in Y7). It is understandable that the school is concerned about this, and has a strong desire to plan for a reduced number of classes. The question is whether, with a shortfall of 331 places across the Borough, the school will have more than 210 applications in September 2020. A shortfall of 331 is a significant shortfall. The school remained undersubscribed in 2019 when there was a shortfall of 165 places, but the predicted shortfall for September 2020 is nearly double this figure. It does appear that Harris Academy is taking most of the children from the area local to the school, and that applicants in other parts of the Borough, where schools are oversubscribed, are not choosing to apply to Overton Grange. This may be because there are options available in other neighbouring authorities; because there are transport difficulties; or because other schools are offering over PAN. Whatever the reason, the school considered that it would be unlikely to have 240 pupils on roll in September 2020 when it decided to reduce the PAN to 210. Also relevant was the reduction in the number of applicants the school will receive from Devonshire School.

33. If I allow this objection, the LA will be guaranteed to have 30 additional school places available within the Borough, which would go some way to alleviating the predicted shortfall. If there is a need for the school to provide 240 places, the school has guaranteed to do so. Although, as the LA says, this is not a legally binding guarantee, the school has confirmed to me that it will honour its promise. I have no reason to doubt that the school would act in good faith if called upon. It is evident to me that the school has faced real difficulties since the opening of Harris Academy, and it is therefore reasonable for it to have acted in the way it has by reducing its PAN whilst also promising to offer an additional 30

places should the need arise. The school understandably is very unhappy about the reduction in the number of applications which has come about since the opening of Harris Academy. Had it been the case that I had received confirmation that the new proposed free school will open in September 2020, I would not have upheld this objection particularly given the school's promise that it will provide 240 places if 240 places are needed. However, the projected shortfall is so significant that the LA will need to rely absolutely upon the availability of 240 places being available at the school in order to plan on this basis. So, whilst I have no doubt that the school would have honoured its promise, I feel bound to allow this objection in order to provide the LA with the certainty it needs.

34. A further reason for upholding this objection is that the projected shortfall for admissions in September 2021 is 321 places. If I uphold this objection and the school retains a PAN of 210 for admissions in September 2021, the LA will not be able to object at this point in time because the school will not be reducing its PAN. If the school has a PAN of 240 for admission in September 2020 and it becomes clear when the school adopts its arrangements for 2021 that the new proposed free school will be opening for admissions in that year or that, despite a shortfall in the number of places needed across the Borough, the school has nevertheless admitted less than 240 pupils in September 2020, it will have stronger evidence to support a PAN reduction at that point in time.

#### **Other matters**

35. I drew to the school's attention some other matters in the arrangements which I was concerned did not conform to the Code. As mentioned above, the school has responded saying that it will rectify these matters. I am grateful to the school for this. The revisions must be made within two months of the date of this determination. I have summarised these other matters below, and set out paragraph 14 of the Code, which is the relevant paragraph.

36. The definition of home address in the arrangements reads as follows: "*The child's home address excludes any business, relative's or childminder's address and must be the applicant's normal place of residence. If there is a genuine equal share custody arrangement between the two parents, the address that will be used will be the address of the parent who is claiming Child Benefit for the child. All distances will be measured by the computerised Geographical Information System maintained by Sutton Admissions team. Any offer of a place under this criterion is conditional on the child being resident at the address provided.*"

37. The definition specifically excludes the addresses of relatives who are not parents. Whilst I understand the reasons for doing this, it is a fact that some children genuinely do live with relatives, for example where their parents have died or are unable to look after them or where they are looked after and have been placed with relatives by the local authority. In these cases, the child has no other home address. Also, in the case of separated parents, the home address is deemed to be the address of the parent who is claiming child benefit. I understand the need for clarity and certainty in the definitions set out in admission arrangements, but there may be cases where neither parent is claiming



child benefit (for example due to tax thresholds), or where the child in question lives with the parent who is not claiming child benefit for the majority of the school week.

38. Paragraph 14 of the School Admissions Code states that *“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”*. I consider that the definition operates unfairly to children who genuinely do live with relatives and to the children of some separated parents in the situations I have highlighted, and therefore fails to conform to paragraph 14 of the Code.

39. Oversubscription criterion iii) states that *“where a sibling will be in the school, up to and including Year 13, at the time of admission. Please see section 8 for further guidance on the definition of sibling. If within this category there are more applicants than places available, any remaining places will be offered on the basis of proximity of the child’s home address to the school”*. There is no fixed number of places awarded on the basis of sibling priority, so it is difficult to understand how there would be more applicants than there are places available *within that category*. If there are more applicants than there are places, the school would be full and there would be no remaining places. But, in any event, the next oversubscription criterion gives priority to staff at the school. Again paragraph 14 is relevant as this oversubscription criterion is unclear, and therefore does not conform to its requirements.

## Summary of Findings

40. I find that the school has reduced its PAN because it has been undersubscribed in 2018/19 and 2019/20, despite the fact that there has been a shortfall of places across the Borough as a whole.

41. I find that there is a predicted shortfall of places for admission in September 2020 of 301 places. There is no longer a possibility that the shortfall for this year will be alleviated by the opening of a new free school in the north of the Borough which will provide an additional 240 places. Whilst it is difficult to predict whether the overall shortfall in the Borough will lead to an increase in applications to the school, this does now seem likely. Although it has not been the case that the school has admitted up to its PAN of 240 since the opening of the Harris Academy, the shortfall of places across the Borough has never been as high as 301 (331 if the school has a PAN of 210). The school has guaranteed to the LA, and to me, that it will increase its PAN to 240 should the need arise. Although I have no reason to doubt the school’s sincerity in providing the guarantee it has, I find that the predicted shortfall in places for 2020 and 2021 is so significant that the LA will need to rely upon the availability of 240 places at the school as a certainty in order to be able to plan on this basis. For this reason I uphold the LA’s objection.

42. I find that there are other aspects of the arrangements which do not conform to paragraph 14 of the Code. The definition of home address operates unfairly, and Oversubscription criterion iii) is unclear.

## Determination

43. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the reduction in the PAN for September 2020 from 240 – 210 determined by the governing board of Overton Grange School for Overton Grange School, Sutton.

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

45. 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 school must increase its PAN to 240, and make revisions to the definition of 'home address' and Oversubscription criterion iii) within this timescale.

Dated: 4 October 2019

Signed:

Schools Adjudicator: Marisa Vallely