



Office of
the Schools
Adjudicator

Determination

Case reference: VAR906

Admission authority: London Borough of Lambeth for Fenstanton Primary School, Tulse Hill, London

Date of decision: 17 February 2020

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by the London Borough of Lambeth for Fenstanton Primary School for September 2020.

I determine that the published admission number will be 60.

The referral

1. The London Borough of Lambeth (the local authority) has referred a proposal for a variation to the admission arrangements for September 2020 for Fenstanton Primary School (the school), to the Office of the Schools Adjudicator. The school is a community school for children aged 3 to 11 in the area of Tulse Hill in the London Borough of Lambeth.
2. The proposed variation is that the published admission number (PAN) be reduced from 90 to 60.

Jurisdiction

3. The referral was made to me in accordance with section 88E of the School Standards and Framework Act 1998 (the Act) which states that: "*where an admission authority (a) have in accordance with section 88C determined the admission arrangements which are to apply for a particular school year, but (b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined, the authority must [except in a case where the authority's proposed variations fall within any description of variations*

prescribed for the purposes of this section] (a) refer their proposed variations to the adjudicator, and (b) notify the appropriate bodies of the proposed variations”.

4. Paragraph 3.6 of the Code also requires that relevant parties be notified of a proposed variation and that the governing board of a community school such as this one be consulted. The local authority has provided me with a copy of its notification on the proposed variation and the list of schools and other bodies to which it was sent and of evidence of consultation with the school’s governing board. I am satisfied that all relevant bodies have been notified and that views expressed have been taken into consideration. I find that the appropriate procedures were followed and I am accordingly satisfied that the proposed variation is within my jurisdiction.

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 referral from the local authority dated 8 January 2020, supporting documents and further information provided in response to my enquiries;
- b. the determined arrangements for 2020 and the proposed variation to those arrangements;
- c. evidence that the governing board for the school has been consulted and a letter from the school providing its view on the proposed variation;
- d. maps showing the location of the school and other relevant schools, and the home locations of children currently in reception year (YR) at the school;
- e. a copy of the local authority’s booklet for parents seeking admission to schools in the area in September 2020;
- f. information available on the websites of the local authority and the Department for Education;
- g. a copy of the letter notifying the appropriate bodies about the proposed variation; and comments received on the proposed variation from the appropriate bodies.

The proposed variation

7. The school is one of six primary schools in the local authority area for which reductions in the PAN have been requested through a variation at this time. Three of these schools, including the school, are part of the Gypsy Hill Federation and share an executive headteacher and governing board. The co-chairs of the governing board wrote to the local

authority on 26 September 2019 asking that the PAN for the school should be reduced from 90 to 60 for admissions in 2020. In the same letter there were also requests that the PANs of two other schools in the federation should also be reduced.

Consideration of proposed variation

8. Paragraph 3.6 of the Code requires that admission arrangements, once determined, may only be changed, that is varied, if there is a major change of circumstance or certain other limited and specified circumstances. I consider below whether the variation requested is justified by the change in circumstances.

9. There is no requirement for public consultation as required by the Code for a change to most aspects of admissions arrangements when the change is made through a variation. This is because a variation is to meet a major change in circumstances since the arrangements were determined. Parents and others with an interest therefore do not normally have an opportunity to express any views on the proposed variation. Moreover, once the PAN has been set for a community school such as this one, the only body that can object if the PAN remains the same in subsequent years is its governing board. My jurisdiction is for the arrangements for 2020. However, the PAN has not yet been set for 2021 and in these circumstances, it is appropriate to consider other years beyond 2020. This is because a reduced PAN – which has been set without the consultation which would be required by the Code if the PAN were to be reduced in accordance with normal procedure – would be able to continue without scope for future challenge. It is important to consider in that context whether the places removed might be wanted in future years and, if so, if there are good reasons to justify their removal. I note that in this context that the local authority has consulted on setting the PAN at 60 for 2021.

10. I have therefore scrutinised the data to try to ascertain if there will be sufficient school places in the local area if the PAN is reduced from 90 to 60; and considered the demand for places at the school and the effects on parental preference of such a change; the reasons given for the change; and whether the change is justified in these circumstances. The timing is also pertinent as parents have already stated their preferences for admissions to YR in 2020 (the closing date was 15 January) with the PAN set at 90.

11. I questioned the local authority regarding the proximity of the date of the request for a variation (8 January 2020) and the closing date for applications and the local authority told me, *“In accordance with the guidance, as part of the period of notice, the school, and the Local Authority made the information available that the school had applied for a reduction in the PAN, therefore the parents would have been making an informed choice.”*

12. The local authority explained that it had asked the school to provide information on its websites for parents on the proposed reduction. A copy of this was provided to me. The document was described as a consultation although it would not fulfil the requirements of the Code as a consultation but, as discussed above, no consultation is required for a variation. The same notice was placed on the local authority website and said that the

consultation ran between 15 November and 13 December 2019 and responses could be made in that four week period; none were received. This is a worthy attempt to make sure that parents were aware of the proposed variation.

13. However, I think it is likely that some parents would have relied on the information provided in “*Starting primary school in Lambeth: 2020/21*” which is the local authority’s booklet for parents seeking admission to schools in the area in September 2020 which stated that the PAN was 90. In addition, parents could have started applying for a place from 1 September 2019 and so some may have applied in advance of this notice; others may not have looked at the websites; and others may not have understood the implications for their application. I remain of the view that some parents at least may well have made their preferences unaware of the proposed reduction in PAN.

14. I will consider first the need for school places in the area. The local authority area comprises a densely populated part of inner London. The surrounding local authority areas of Croydon, Westminster, Southwark and Merton are similarly urban. There are large numbers of primary schools potentially within reach of those living in the local authority area and in its neighbouring authorities. For example, the government website, “*Find and compare schools in England*” shows 13 state funded primary schools admitting children to YR within one mile of the school.

15. The local authority has a duty to make sure that there are sufficient school places and, to do this, plans on the basis of planning areas. The school is in the planning area known as the Brixton planning area (the planning area) which contains 16 primary schools admitting children to YR. Four of the other five schools for which reductions in PANs are being proposed are in different planning areas and one, Stockwell Primary School, is in the same planning area. That proposed variation is the subject of my determination VAR911.

16. Table 1 below shows data provided to me on the planning area: the sum of the PANs of the primary schools, the number of children in YR in recent years, the local authority’s forecasts for the number of children requiring a place in YR in 2020 and 2021 and the difference between the places available and the sum of the PANs and the forecasts as appropriate.

17. Table 1: the number of children and places available in the planning area

	2017/18	2018/19	2019/20	2020/21	2021/22
Sum of PANs of the schools in the planning area	847	862	870	855	885*
Number of children in YR at date of relevant census	744	684	690	694 (forecast)	654 (forecast)
Difference between the places available and the number of	103	178	180	161	231

children (the number of vacant places)					
Difference shown as a percentage of the whole (the percentage of vacant places)	12%	21%	21%	19%	26%

*figure for 2021 as provided by the local authority on 8 January 2020 so excluding any changes made following consultation by the local authority or other admission authority.

18. Table 1 shows both an increasing number of places available in recent years and, overall, an increasing proportion of vacant places since admissions in 2017. For 2020 there are 19 per cent vacant places forecast; this is a high proportion. If the number of places were reduced by 30, as proposed through the variation, then there would still be 131 surplus places in 2020 which would reduce the percentage surplus to 16 per cent. This is still a high proportion and so I am confident that if the PAN at the school were to be reduced by 30 places then there would be sufficient places for all the children in the area.

19. The variation requested for Stockwell Primary School is a separate matter which is addressed in determination VAR911 but I note that if the variations for both schools were agreed, therefore reducing the overall number of places by 60 to 795, there would still be 101 surplus places forecast. This would be nearly 13 per cent which would give me no concerns that there would be insufficient places for children in the planning area requiring a place in YR in 2020.

20. Table 2 shows the number of children in YR at the school in recent years and the forecast made by the local authority for 2020 and 2021.

Table 2: Numbers of children in YR at the school

	2017/18	2018/19	2019/20	2020/21	2021/22
PAN for the school	90	90	90	90	90
Number of children in YR	69	57	47	56*	53*
Difference	21	33	43	34*	37*

*forecast figures

21. The information in table 2 shows that for admissions in 2018 and 2019 there would have been sufficient places in YR to meet demand if the PAN had been set at 60 as proposed in the variation. The forecasts for 2020 and 2021 continue this pattern. I am aware that this request for a variation has been made when most parents will already have stated their preferences for admissions in 2020. The data provided to me assures me that it is unlikely that any parent would not have their preference met in 2020 if the PAN were reduced to 60.

22. I will now consider why the local authority has requested the variation. The local authority explained that birth rates have been reducing for some years and this affects the number of children likely to be seeking a place in YR in due course. If 90, or close to 90, children are admitted then a school can organise YR provision in three classes each containing 30 or nearly 30 children. Given that schools are funded primarily on the basis of pupil numbers, this is financially efficient. If the PAN is 90 and far fewer children but more than 60 are being admitted to the school then this can lead to financial problems which I will explore further below.

23. Infant class size regulations mean that for infant aged children, there must not be more than 30 children to a single school teacher (except in limited circumstances). In addition, in a normal year of entry a school must admit all those who apply up to the PAN. A PAN of 90 could thus mean that just over 60 children are admitted to the school and the school having, because of infant class size regulations, to provide three teachers to teach them. For example, in 2017 there were 69 children in YR. These would have to have been educated by three teachers most likely organised in three classes, probably of around 23 each. The school tells me that the level of funding for the school makes such small classes financially unviable in the long term. It is possible to have mixed aged classes to make the class organisation more economic but this is not popular with schools in many cases and can be particularly complicated in areas with movement of children into and out of the school which tends to be more common in urban areas.

24. The school has told me that it has found the reducing numbers challenging but has been able to avoid some of the worst financial implications as it can work flexibly within its federation. However, the school also told me that the proposed variation is vital to its future financial security and said that unless the PAN was reduced to 60 then academic standards could be affected.

25. In summary, on the basis of the information provided to me by the local authority, I am assured that if the PAN is reduced by 30 for 2020 then there will be sufficient places for local children, that parental preference will not be frustrated and that the variation is justified.

Determination

26. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by the London Borough of Lambeth for Fenstanton Primary School for September 2020.

27. I determine that the published admission number will be 60.

Dated: 17 February 2020

Signed:

Schools Adjudicator: Deborah Pritchard