



Office of  
the Schools  
Adjudicator

## Determination

**Case reference:** VAR916

**Admission authority:** Buckinghamshire County Council for Whaddon Church of England First School

**Date of decision:** 17 March 2020

## Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I do not approve the proposed variation to the admission arrangements determined by Buckinghamshire County Council for Whaddon Church of England Infant School for September 2020.

## The referral

1. Buckinghamshire County Council (the local authority) has referred a proposal for a variation to the admission arrangements for September 2020 for Whaddon Church of England First School (the school), to the Office of the Schools Adjudicator. The school is a voluntary controlled school for children aged 4 to 8 in the village of Whaddon.
2. The proposed variation is to reduce the published admission number (PAN) from 18 to 10 for September 2020.

## 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. When an admission authority proposes a variation to admission arrangements it is required by paragraph 3.6 of the School Admissions Code (the Code) to notify the appropriate bodies in the relevant area. The appropriate bodies are those listed in paragraph 1.44 (c), (d) and (f) of the Code and as far as not covered by them, all governing bodies for community and voluntary controlled schools in the relevant area. The relevant area is defined in section 88F of the Act as the area of the local authority unless the local authority has determined another area through the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999. When the local authority submitted this request for a variation, not all of the appropriate bodies had been notified.
5. After I pointed out this requirement to the local authority it proceeded to notify all the appropriate bodies in the relevant area. I am, therefore, satisfied that the proposed variation is within my jurisdiction.

## Procedure

6. In considering this matter I have had regard to all relevant legislation, and the Code.
7. The documents I have considered in reaching my decision include:
  - a. the referral from the local authority dated 12 February 2020, supporting documents and responses 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;
  - d. Information on the local authority's website;
  - e. a map showing the location of the school and other relevant schools; and
  - f. comments received on the proposed variation from the appropriate bodies.

## The proposed variation

8. The school is situated in the village of Whaddon less than one mile from the border between Buckinghamshire and Milton Keynes. The school is recorded on the Department for Education (DfE) database as being called "Whaddon Church of England First School" and having an age range of 4 to 8. This is how the school is referred to by Ofsted in the report describing it as "Outstanding" in May 2019. However, the referral from the local authority named the school as "Whaddon Church of England Infant School". In some of the accompanying papers the age range is stated to be 4 to 7. The school has a capacity of 80 pupils.

9. When I raised these discrepancies with the local authority I was told *“When Buckinghamshire LA changed its ages of admission and transfer over 20 years ago, Church of England schools were able to decide not to change their age ranges, and Whaddon CE Infant School was one of the schools that decided not to change. However, very few (if any) children stay on at the school beyond Year 2 – indeed as stated in the proposal to change the school’s age range many parents choose to leave in the middle of Key Stage 1. However, it is acknowledged that technically/legally the school is currently a First school as inspected by Ofsted in 2019 and the request to the OSA/statutory notice should have made that clear. I apologise for the oversight.”*

10. The change in circumstances which the local authority says requires the reduction in PAN from 18 to 10 is the decision by the local authority to approve the proposal from the governing board to change the age range of the school to cover the full primary age range of 4 to 11 from September 2020. The Report to the Cabinet Member for Education and Skills dated December 2019 concerning this decision refers to the current age range of the school as being 4 to 7. This report also refers to a reduction in the *“admission number”* for *“Key Stage One”* from 18 to 11 and to an *“admission number”* for *“Key Stage Two”* being set at 12. The decision notice reads *“The Cabinet Member: AGREED that, as the school’s governing board and the Local Authority have followed the Department for Education statutory guidance, permission is granted for the proposed change of age range at the school and the reduction in the admission number from 18 to 11 for Key Stage One. AGREED that the change takes place from September 2020.”* A note was added to this decision notice on 22 January 2020 saying, *“the correct admission numbers should have been 10 children admitted in September each year (not 11) and then an additional 1 child from Year 3 (KSII)”*.

11. With the referral I was sent a document headed *“Proposed expansion of Whaddon CE School from a First School (Ages 4-8) to a Combined Primary School (Ages 4-11)”* which appears to have been prepared by the governing board as part of the consultation prior to the publication of the statutory notice. This names the school and states the age range as recorded by the DfE and proposes a PAN of 10 and makes no mention of a later point of admission. I do not have the jurisdiction to investigate the statutory process which led to the decision on the change of age range to see if it reflects the proposal which the governing board consulted on and the contents of the statutory notice which the governing board would have published, or whether inaccuracies in the stated current age range of the school undermines the validity of the decision. However, I need to say that the decision notice shows a misunderstanding of what a PAN is. Furthermore, the decision notice goes beyond the power of the local authority as an admission authority to change most aspects of already determined admission arrangements (including any reduction in the PAN) without the approval of the schools adjudicator as set out in paragraph 3.6 of the Code.

12. A further issue arises if implementation of the change of age range is dependent on my approval of the reduction in the PAN and that is not given. In that case, it may be necessary for the governing board to either revoke or modify the change of age range as

set out in paragraphs 20 and 21 of Schedule 3 to the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013. It would have been wiser for the local authority to have approved the change of age range subject to approval of a variation to the admission arrangements as is allowed for in paragraph 8(f) of Schedule 3 to those regulations.

13. When I raised these concerns with the local authority its response did not convince me that the issues and implications were fully understood and so I have set them out above.

## Consideration of the proposed variation

14. The application says that the PAN is currently 18. With a capacity for 80 pupils the school can accommodate four year groups each of 18 pupils. However, it could not accommodate seven year groups each of 18 pupils, which would give a potential total of 126 children, well above the capacity of 80. The number of children on roll is currently 39 across Years R, 1 and 2. If these children remain at the school until the end of Year 6 and 18 were admitted in September 2020 there would only be 23 more places available for admission in the next three years, for example two groups of eight and one of seven. Restricting admission to 10 in 2020 would allow the same number to be admitted in that and each of the next three years keeping the number on roll below the capacity. On the face of it this is a sensible proposal. That said, the effect on the supply of places in the area and parental preference should be considered.

15. The local authority provided me with data showing that there are currently 230 Year R places available in the area and 195 children expected to need places in 2020. This data appeared incorrect in at least one way because it shows 20 places being currently available at the school, not 18 as stated in the application. If I take the other figures to be correct, a reduction of 10 places would not compromise the local authority's ability to provide sufficient places in 2020.

16. The local authority provided me with details about the applications for places in 2018, 2019 and 2020. Although I asked for the information, the local authority did not tell me how many places it would anticipate allocating in 2020 if the PAN remained at 18.

|      | First Preferences |           | Second Preferences |           | Lower Preferences |           |
|------|-------------------|-----------|--------------------|-----------|-------------------|-----------|
|      | Applied           | Allocated | Applied            | Allocated | Applied           | Allocated |
| 2018 | 16                | 16        | 5                  | 1         | 6                 | 0         |
| 2019 | 10                | 10        | 3                  | 1         | 8                 | 0         |
| 2020 | 14                | -         | 10                 | -         | 7                 | -         |

17. This pattern suggests that if I approve the proposed reduction in PAN, then 4 children for whom this is their first preference would not be offered places, and one or more children for who it was their second preference would not be offered places. I should note that some of those for whom the school is a second or lower preference may actually have a higher priority than some of those who have put the school as their first preference. If this is the case and those children cannot be accommodated at their higher preference schools, more of those for whom the school is first preference may have to be disappointed as a result of a reduced PAN.

18. Many schools are unable to offer places to children for whom the school is a high preference and if there are other schools near to those children's homes that is often completely reasonable and fair. In this case the local authority has told me that the majority of these applications are from children who do not live in the catchment area or in the local authority area. I have noted above that the school is less than one mile from the boundary with Milton Keynes and having looked at other schools in the area, although there are several primary schools on the Milton Keynes side of the border, the school is the nearest Church of England primary school to part of Milton Keynes. The Oxford Diocesan Board of Education, as the representative body of the Church of England for the school, has expressed its support for the proposed variation; no comments were received from the other appropriate bodies.

19. What concerns me most, however, about the effect on parental preference is the timing of the application. The deadline for applications for places in September 2020 was 15 January 2020. Parents would have applied in good faith for one of 18 places before this date and before the decision to change the age range had been taken. I have noted above the confusion concerning the PAN in that process. The application for this variation was made on 12 February 2020 but could have been submitted immediately after the change in age range was agreed in December. It is highly likely that an adjudicator's decision would have been forthcoming in time for parents and others to be notified of a reduced PAN (had it been approved) before the 15 January deadline. There was further delay because the local authority had not notified the appropriate bodies in the relevant area of the proposal as legislation required it to do. When the local authority did notify all of the appropriate bodies it offered them until 16 March to send in any comments. A deadline for responses was not necessary and further delayed consideration of the proposal until after that date. Consequently, a decision on the proposal could not be made until the second half of March 2020. This is extremely close to the national offer day for allocating primary places, which is 16 April 2020. I question the fairness of making such a late change and think a change in PAN as late as this presents a risk to the processing of applications not only in Buckinghamshire, but also in Milton Keynes given the need to exchange information about preferences in circumstances where it is known that there are cross border applications. This could in turn lead to errors.

20. I have gone on to consider the implications of refusing this application. There are currently 39 children on roll, if as many as 18 children are admitted in September 2020

there would be 57 distributed as in the table below. The school would be below capacity and within its current age range of 4 to 8.

| Year R | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 |
|--------|--------|--------|--------|--------|--------|--------|
| 18     | 12     | 15     | 12     | -      | -      | -      |

21. The school could still extend its age range and stay within its capacity if the number of admissions was restricted in subsequent years. The local authority was required to determine the 2021 admission arrangements for the school by 28 February 2020. If the local authority intended to set a PAN of 10 for 2021, then this constituted a change to the admission arrangements and paragraph 1.43 of the Code required the local authority to consult on this for 6 weeks between 1 October 2019 and 31 January 2020. I was told that consultation on the change of age range took place for four weeks between 2 September 2019 and 14 October 2019. While meeting the requirements for statutory proposals, this would not meet the requirements of the Code for changes to admission arrangements. I looked at the local authority's website during the last week of February 2020 for details of the admission arrangements for 2021.

22. I found a consultation document containing proposed admission arrangements for community and voluntary controlled primary schools for 2021. In those proposed arrangements I was surprised to note the proposed PAN for the school was 20, an increase from that of 18 which the application stated was the PAN for 2020. I then looked back at the arrangements published on the local authority's website for 2020 (which I noted had not been determined until 25 March 2019 which is over three weeks after the date of 28 February 2019 required by the Code) and found the PAN stated as 20, not the 18 stated in the application and in the decision making concerning the change in age range.

23. When I ask the local authority why it was proposing a PAN of 20 for 2021 after seeking a reduction in PAN for 2020 and whether the arrangements had yet been determined for 2021 I was told "*The LA forgot to include the reduction in the school's PAN within this year's 2021 annual admissions consultation exercise.*" I was also told of a delay in determining the admission arrangements for 2021 and was sent a link to a document published on the local authority's website on 10 March 2020 setting out the arrangements which the Cabinet Member for Education and Skills was being asked to determine on 18 March 2020. These include a PAN of 10 for the school for 2021. A change the consultation on which does not appear to have met the requirements of the Code.

24. Based on a PAN of 10 for 2021 I have looked at the possible roll for that year. The table below shows that the total number on roll in 2021 could be as high as 67. This is still within the school's capacity, but leaves just 13 places to be allocated in the next two years. There could be more than 13 places if fewer than 18 are taken up in 2020, although the local authority could have to offer as many as 20 places in 2020 as that is the PAN stated in the published determined arrangements. In recent years 13 places would be enough to

meet the average demand for places from within the school's catchment area and PANs could be set for 2022 and 2023 accordingly at, say, six and seven.

| Year R | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 |
|--------|--------|--------|--------|--------|--------|--------|
| 10     | 18     | 12     | 15     | 12     | -      | -      |

25. The governing board is currently under a duty to implement the change in age range. It appears to me that it could still do so and keep within the capacity of the school if I do not approve the proposed reduction in PAN for 2020. The governing board could, however, take steps to modify, perhaps by delaying for a year, or revoke that proposal.

26. Having taken all of the above factors into consideration I have decided not to approve the proposed reduction in PAN for 2020.

## Summary

27. While considering this case I have been very concerned to note many inconsistencies in documents produced by the local authority concerning the name, age range and the existing and proposed PAN of the school. I have also noted misunderstandings about what a PAN is and how it can be changed. The local authority had initially not met the requirement to notify appropriate bodies in the relevant area and appears to have determined a PAN for 2021 without consulting as required by the Code. For two years in succession admission arrangements have been determined by the local authority after the required date.

28. Delays in submitting the application and failure to notify appropriate bodies mean that there is little time left to implement a change of PAN before primary school places are allocated on 16 April 2020. The administrative failings noted above do not give me confidence that no errors will be made in redistributing children from this school to others in the short time available.

29. I expressed my concern above for parents applying for the school in good faith thinking that there would be 18 places available and that this proposal takes eight places away just before places are allocated. This concern is exacerbated because parents are not among the appropriate bodies that must be notified of a proposed variation and consultation for 2021 did not suggest any change to the PAN. I have not seen details of the consultation which preceded the publication of the statutory notice to change the age range, but deficiencies in these other processes do not give me confidence that all parents who might have had an interest were able to express a view or knew of a possible reduction in their chance of getting a place at the school.

30. I am conscious that by not taking advantage of the opportunity to make the change of age range conditional on the approval of a variation to the admission arrangements, the local authority may have put the governing board into a position where it may not be able to

implement the change in age range without exceeding the capacity of the school if the PAN is not reduced for 2020. There are, however, steps which can be taken to address this.

31. For the reasons set out above I do not approve the proposed reduction in the PAN for 2020.

## **Determination**

32. In accordance with section 88E of the School Standards and Framework Act 1998, I do not approve the proposed variation to the admission arrangements determined by Buckinghamshire County Council for Whaddon Church of England First School for September 2020.

Dated: 17 March 2020

Signed:

Schools Adjudicator: Phil Whiffing