



Office of
the Schools
Adjudicator

Determination

Case reference: VAR2037

Admission authority: Milton Keynes Council for Russell Street School in Stony Stratford, Milton Keynes

Date of decision: 08 December 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 Milton Keynes Council for Russell Street School for September 2021.

I determine that the published admission number will be 60.

I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with 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. Milton Keynes Council (the local authority) has referred a proposal for a variation to the admission arrangements for September 2021 for Russell Street School (the school), to the adjudicator. The school is a community infant school for children aged three to seven in Stony Stratford, Milton Keynes.
2. The proposed variation is the reduction of the published admission number (PAN) from 90 to 60 for admissions in September 2021.

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. I am 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 9 November 2020, supporting documents and further information in response to my questions;
 - b. the determined arrangements for 2021 and the proposed variation to those arrangements;
 - c. evidence that the governing board for the school has been consulted and further information provided to me by the governing board;
 - d. a map showing the location of the school and other relevant schools; and
 - e. confirmation that the appropriate bodies have been notified of the proposed variation.

The proposed variation

7. As noted above, the proposed variation is to reduce the PAN for September 2021. In its request for a variation the local authority said, “Following national offer day in April 2020, there were approximately 640 vacancies for Year R places across Milton Keynes for children starting school in September 2020. As a result of this surplus, Milton Keynes Council is working in partnership with a number of schools to ensure that the surplus places projected for future years are reduced so that there are no adverse effects on schools’ budgets and staffing requirements.”

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 will consider below whether the variation requested is justified by the change in circumstances.

9. Paragraph 3.6 of the Code also requires that relevant parties be notified of a proposed variation. The local authority has confirmed that that the appropriate bodies have been notified. I have seen confirmation from the school's governing board that it supports the request for the variation. I am satisfied that all relevant bodies have been notified. I find that the appropriate procedures were followed.

Consideration of proposed variation

10. There is no formal consultation required for a variation and so parents do not have the opportunity to express their views. Once the PAN has been set then no body except the governing board of a community or voluntary controlled school can object to the PAN remaining the same. In this instance the local authority is in the process of consulting on setting the PAN at 60 for admissions in 2022.

11. I have 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 for September 2021. I have also considered the demand for places at the school; the reasons given for the change; the potential effect on parental preference and the views of the governing board on what is proposed. Taking account of all these factors, I have come to a view as to whether the circumstances justify the reduction in PAN at the school

12. The local authority has a duty to make sure that there are sufficient school places for the children in its area. To fulfil this duty the local authority assesses the future number of places to be needed and plans to meet that need. I will first consider the number of places across the local authority as it is a relatively compact area. The data provided to me on the number of places across the local authority area and the number of children forecast to be seeking a place in reception year (YR) in future years is provided in table 1 below.

Table 1: number of places in local authority area with forecast of demand

| | 2021 | 2022 | 2023 |
|--|-------------|-------------|-------------|
| Sum of PANs of schools | 4315 | 4335* | 4335* |
| Forecast number of places required | 3524 | 3570 | 3378 |
| Number of vacant places | 791 | 765 | 957 |
| Number of vacant places as a percentage | 18% | 18% | 22% |

*The local authority's expectations of total PANs

13. Table 1 provides evidence that across the local authority area there will be a generous proportion of vacant places in 2021, 2022 and 2023. The local authority uses planning areas, which are geographical groups of schools, to support its forecasting of

need. The planning area in which the school is situated consists of seven schools admitting children to YR and is known as the “Radcliffe liaison group of schools” (the planning area). Table 2 provides information on the number of places and the admissions of children in the planning area.

Table 2: the number of places, the number of children allocated places and the number of children forecast to be admitted in the planning area

| | 2018 | 2019 | 2020 | 2021* | 2022* |
|--|-------------|-------------|-------------|--------------|--------------|
| Sum of the PANs | 370 | 370 | 370 | 370 | 400** |
| Number of children allocated places | 287 | 282 | 288 | 268 | 266 |
| Number of vacant places | 83 | 88 | 82 | 102 | 134 |

*figures for 2021 and 2022 are forecasts

** The local authority’s expectations of total PANs

14. Table 2 shows a high proportion of surplus places across the planning area. For 2020 the number of vacant places was 82 which is 22 per cent of the whole. The forecast shows an increase to 102 vacant places for 2021 which would be 28 per cent of the number of available places. The forecast shows the number of surplus places increasing again for 2022. The planned expansion of another community school by 30 places will contribute to the number of places available. I asked the local authority to explain its rationale given the high proportion of surplus places. The local authority explained that Hanslope Primary School, a community school for which the local authority is intending to increase the PAN by 30, is in the same planning area as the school but located nearly seven miles away by a walking route. I was informed that Hanslope is an outlying village and few children choose to attend Hanslope School who do not live in the village and vice versa. Planned housing developments in Hanslope mean an anticipated growth in demand and so the school is being expanded accordingly. I recognise that this is unlikely to have an effect on the numbers of places sought at the school for which I am considering the proposed reduction in PAN.

15. Indeed, the demand for places at Russell Street School is more likely to be affected by changes in population in the immediate area and by changes to the relative popularity of other schools close to the school. There are 23 state-funded schools admitting children to YR within three miles of the school and two within a mile. Parents therefore appear to have some choice of schools particularly as most of the schools within the planning area have some capacity. I will now consider the demand for the school.

16. Primary schools, including this school, in the local authority area largely use catchment areas. The school and the local authority provided information on demand for the school from its catchment area and I will consider this below. Table 3 below shows the admissions at the school in recent years and the forecasts for 2021 and 2022.

Table 3: admissions to the school

| | 2018 | 2019 | 2020 | 2021* | 2022* |
|--|-------------|-------------|-------------|--------------|--------------|
| PAN | 90 | 90 | 90 | 90 | 90 |
| Number of children allocated places | 84 | 79 | 76 | 22 | 34 |
| Number of surplus places | 6 | 11 | 24 | 68 | 56 |
| Number of first preferences | 73 | 73 | 68 | N/A | N/A |

*forecasts

17. Table 3 shows that more than 60 children have been admitted to the school in recent years, but also that these numbers have declined slightly over the past three years. The number of first preferences illustrate that in each year more than 60 parents have wished their child to attend this school more than any other. It appeared to me that reducing the PAN to 60, based on past trends, is likely to frustrate parental preference and strong justification would be required to do this through a variation rather than by determining a lower PAN following the normal process of consultation as laid down in the Code. I therefore asked for further information and both the school and the local authority provided this. My request included an explanation for the very sharp drop anticipated in the number of parents seeking a place for their child at the school for 2021. I sought to understand why, given that 68 parents made the school their preference for 2020 and that 76 children were admitted that year, the local authority expected that only 22 would be admitted in 2021. This would be an extreme reduction.

18. In response the governing board and the local authority provided information about the context in which the school is operating. The school expanded to have a PAN of 90 in 2015. However, it has not admitted that number of children in any year but has largely admitted 70 plus children. The governing board and the local authority also explained that they expected other schools in the area to become more popular and that this would reduce the demand for places at the school. They said:

- 18.1. The number of children actually living in the catchment area for the school has been much lower than the number admitted. For applications in 2020 there were 68 first preferences and only 28 of the 68 were for children living in the catchment area.
- 18.2. A local school (St Mary and St Giles) was judged inadequate in 2019 by Ofsted and the parents of 22 children who lived in its catchment area stated the school as a first preference for 2020. St Mary and St Giles, which is about one fifth of a mile from the school, has now been judged to be good by the local authority; the school and the local authority say that they anticipate that because of this St Mary and St Giles will become more popular. I note that this school has a PAN of 30 and admitted 15 children for 2020 so the school could accommodate another 15 children in 2021 compared to 2020. If all 22 children from St Mary and St Giles catchment who were admitted to Russell Street in 2020 had preferred St Mary and St Giles, that would have meant a

total of 37 children of whom only 30 could have been accommodated there. It is also the case that until Ofsted determines that it is no longer inadequate, its formal Ofsted category will continue to be inadequate. I am not convinced that significant numbers of parents who live in the catchment for St Mary and St Giles will prefer their children to attend that school in 2021, nor could that school accommodate them all if they did.

- 18.3. Another local school (Wyvern) had been judged to require improvement in 2016 by Ofsted and the parents of 17 children who lived in its catchment area put Russell Street as a first preference. Ofsted judged Wyvern School as good in May 2019. Wyvern has a PAN of 120 and admitted 76, 74 and 77 children in 2018, 2019 and 2020 respectively. I note that for admissions in 2020 the judgment made by Ofsted that the school was now good would have been known by parents before applications were made and so I am not convinced on this basis that there will be a sudden increase in popularity for Wyvern from those who currently favour Russell Street School. I was also told in relation to Wyvern that “Many parents of children who live in the Wyvern area use public transport to get to school and this has proven difficult over the current pandemic. Many parents have made the choice to move to their local schools because of this.” Such changes of school will not show in the admissions data for YR and no further details were provided to me, so I cannot easily form a judgement on this point.
- 18.4. Another local school which admits children to YR, Greenleys First School, was judged by Ofsted to require improvement in 2012. As this school was judged to be good in 2018 it seems unlikely that demand for Greenleys would suddenly increase for 2021 and again, it is unlikely that many more children could be admitted. This is because 56 children were admitted in 2020 to Greenleys First School and the PAN was 60 so there was only scope to absorb four more children. The school and the local authority also said that Greenleys Junior school, the linked school for the first school, was judged to require improvement and that it is now judged as outstanding. This judgement of outstanding was made in 2015 and so it seems unlikely that the pattern of parental preference will change for 2021 for the first school as a result.
- 18.5. The school and the local authority also said, “A new 2 form of entry primary school (Fairfields) opened 1.6 miles away in September 2017. This area has much more affordable housing for young families and feeds to a new secondary school (The Watling Academy – opened in September 2020), currently preferred by parents.” It is hard to assess the potential effect of these factors at this stage but the school said that there has been a reduction in the number of children in its nursery and it considers that this may be because more parents are possibly using the nursery at Fairfields. The school described the numbers attending its own nursery as having been over 50 until

Fairfields opened in 2017 when the numbers dropped to 40 and in 2020 there are 21 in the nursery. I consider that the reduction in the number of children attending the nursery could be an indicator of future parental preferences for YR.

19. This information did not convince me that there was a strong likelihood that the number of parents seeking a place at the school would drop as significantly as forecast for 2021 and so this information alone does not justify a reduction to the PAN through a variation. At the time of writing, some parents will already have made their applications for 2021 and others will do so soon and applications are being made in anticipation that the PAN for the school is 90. At this point in time, strong justification is needed to reduce a PAN through a variation in the knowledge that parental preference may be frustrated.

20. The school also provided further information on its class organisation and budgeting. Every school receives the larger part of its revenue based on the number of children admitted. Infant class size regulations mean that infant classes (those where the majority of children will reach the age of five, six or seven during the school year) must not contain more than 30 pupils with a single qualified teacher (except in specific circumstances). The school only has infants and so every class, except in so far as some of the children are excepted children for the purposes of the regulations, must have 30 or fewer children. Because the school is an infant school, even with a PAN of 90 it would not contain more than 270 children plus those in its nursery as it has only three year groups plus its nursery. It is therefore not a large primary school and smaller schools generally have less budget flexibility. As I go onto explain, these are important factors in this particular case.

21. The headteacher responded to the request for further information on behalf of the governing board and said, "I became Headteacher of Russell Street School in April 2020, a new Business Manager started at the same time. It became quickly clear that given the current numbers on roll, and the numbers on roll for the past few years, the school is not a financially viable 3 forms of entry school. With close consultation with the Local Authority and our Governing Board... a decision was made that in the best educational interests of the children, a 2 forms of entry financially secure school with the funds to meet their needs, would provide them with the best possible education. This decision was only made by our Governing Board once they were sure that all children living in our catchment area would be able to secure a place at our school for the foreseeable future."

22. The local authority in its request for the variation said, "A reduction of the PAN from 90 to 60 would ensure economic stability across the whole school whilst also reducing the overall borough surplus. The school's Governing Board approached the council with concerns about the viability of the current PAN as the school currently operates with a number of vacancies in each year group. A reduction to 60 places per year group should ensure that the school will be full in each year group thus providing more financial stability for the school and reducing the number of surplus places across the borough."

23. I understand that the school having some certainty that approaching 60 children will be admitted to YR would mean that it could plan on the basis of two classes of 30 which is a very economical model. I do not find this a sufficiently strong argument to justify reducing the PAN through a variation when it is likely that parental preference would be frustrated. The convenience of reducing the number of surplus places across the local authority area does not add much weight to the case.

24. The request from the local authority continued, "There is a current shortfall of 48 pupils across Years R, 1 and 2 - a loss of £140,000+ in age weighted pupil units [the funding base for the majority of a school's budget], however staffing levels are consistent for a 3 form entry school. Staffing costs are currently 100% of the total budget. The school is unable to group pupils in larger class sizes due to infant class size legislation... The school is not financially sustainable." There were aspects of this statement which were not immediately clear to me so I asked for clarification. In any school, staffing costs will account for the greater part of the budget spend, but all schools have other costs to meet from their budgets.

25. Further information provided to me showed that the school's staffing costs exceeded its income. The school was able to manage this only through the use of reserves accrued through surpluses derived from child care provision made by the school – which is separate from its nursery. The childcare provision ran at a loss during 2020 due to Covid 19 restrictions and is no longer provided by the school. The school is therefore in a situation that it cannot afford its staffing structure. There are three classes for each year group (YR, year 1 and Year 2) so that no class contains over 30 pupils. However, there are 51 vacancies across those nine classes so the average class size is 24.

26. I do note that it would be possible for the school to reduce the number of classes through having mixed aged classes. The current number across the school is 219 which, if all the children were in mixed aged classes could reduce the number of classes by one. I am aware that this would be a significant exercise for the school to undertake and which is likely to lead to parental dissatisfaction at least initially – many schools do have very successful mixed aged arrangements. However, the introduction of mixed aged classes on this scale would create many curriculum and teaching challenges in the short term and may not be sufficient to address the financial problems.

27. I am not convinced that the demand for the school will reduce dramatically as forecast. It is, however, possible if the PAN remains at 90 that the factors described above might lead to just over 60 children being admitted in 2021 and this would require the school again to provide three classes, if it did not mix the classes with other years. In these circumstances I have considered:

- 27.1. Parents are currently applying or have applied for a place at the school on the expectation that its PAN is 90. It seems probable to me that over 60 parents will have the school as their first preference and would anticipate their child being admitted to the school. As most schools in the area have not filled to

capacity, the number of first preferences is a strong indicator of final numbers. I think if the PAN is reduced to 60 then some parental preference is likely to be frustrated.

- 27.2. There are sufficient places available in the area in local schools if the PAN were to be reduced to 60 and there are sufficient places at the school for those living in its catchment area.
- 27.3. There are 21 children in the nursery provision at the school which is a significant reduction on previous years and may indicate that parents will seek places at other schools more so than previously.
- 27.4. The financial information provided to me shows that the school will be likely to go into deficit if just over 60 children are admitted in 2021 so that the school has to provide three classes to meet infant class size regulations. The local authority is consulting on reducing the PAN to 60 for 2022.
- 27.5. The implications of Covid 19 restrictions have negatively affected the school's budget since the PAN was set at 90. There are other possible implications of the Covid 19 pandemic as some parents will want a school where it is not necessary to use public transport to get there.

28. If more than 60 children are admitted there will be a negative effect on the finances of the school which could affect the educational provision made. On balance, taking all the information provided into consideration, I have decided that the reduction in PAN is justified in these circumstances. I approve the variation.

Consideration of the arrangements

29. Having considered the admission arrangements for the school as a whole I find that the following matters do not conform with the requirements relating to admissions as follows (relevant paragraph of the Code in brackets):

- 29.1. The definitions of looked after children and previously looked after children are not consistent with the definitions in the Code and thus makes the arrangements unclear and not meet the requirements of the Code (14 and 1.7);
- 29.2. The first priority in the oversubscription criteria includes children who were looked after outside of England and this does not comply with paragraph 1.7 of the Code (1.7).
- 29.3. The arrangements say that parents can request that their child attends part-time or that his or her admission is deferred until the child is of compulsory school age. This could sound as if such requests could be refused when these are parental rights (14 and 2.16).

30. I brought these matters to the attention of the local authority who responded regarding the first two points that “we are in the process of consulting on our arrangements for 2022/23, and will take your comments into account.” These two matters, in the arrangements for 2021, do not comply with the Code, which is mandatory, and must be addressed; this does not wait on the arrangements for 2022 being determined. Paragraph 3.6 of the Code permits an admission authority to revise the admission arrangements to give effect to a mandatory requirement of this Code and a determination of the adjudicator – both of which apply in this case. I recognise in making these findings that the Government has recently consulted on a new version of the Code which would give children previously looked after outside of England the same level of priority as those previously looked after in England. Until and unless that Code is brought before Parliament and approved by Parliament it does not represent the requirements binding on admission authorities now.

31. On the third matter regarding the rights of parents for their child to attend part-time or defer their admission until the child is of compulsory school age, the local authority responded, “Whilst we recognise parents have a right to delay entry until a child reaches compulsory school age, we encourage parents to request this in order to support discussion with their preference schools, providing the opportunity for parents to discuss any concerns and allowing the headteacher, as the lead educational professional, to further understand the rationale and provide appropriate reassurance to support the family ahead of them reaching a decision.”

32. The arrangements say: “Parents/carers can request that the date their child is admitted to the school is deferred until later in the school year or until the term after the child reaches compulsory school age in that school year. Parents/carers can request that their child attends part-time until the child reaches compulsory school age.”

33. Paragraph 2.16 of the Code says, “The authority **must** make it clear in their arrangements that, where they have offered a child a place at a school:...

b) the child’s parents can defer the date their child is admitted to the school until later in the school year but not beyond the point at which they reach compulsory school age and not beyond the beginning of the final term of the school year for which it was made; and

c) where the parents wish, children may attend part-time until later in the school year but not beyond the point at which they reach compulsory school age.”

34. I understand the wish to make sure that parents make a considered and informed decision. However, that does not and cannot excuse arrangements which do not conform with the law and which do not do what the Code requires. Parents have an absolute right for their children not to attend school until they reach compulsory school age. The Code states what must be said and these arrangements do not make these entitlements clear. The admission arrangements for 2021 thus do not comply with the requirements of the

Code on these three matters and the local authority must address them. For the avoidance of doubt, this does not wait upon the determination of the arrangements for 2022.

Determination

35. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by Milton Keynes Council for Russell Street School for September 2021.

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

37. I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the ways set out in this determination.

38. 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: 08 December 2020

Signed:

Schools Adjudicator: Deborah Pritchard