



Office of
the Schools
Adjudicator

Determination

Case reference: VAR2121

Admission authority: Tameside Metropolitan Borough Council for Buckton Vale Primary School, Stalybridge

Date of decision: 27 May 2021

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 Tameside Metropolitan Borough Council for Buckton Vale Primary School for September 2022.

I determine that the published admission number for 2022 will be reduced from 45 to 30.

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 or another date specified by the adjudicator. In this case I require the arrangements to be revised by 1 September 2021.

The referral

1. Tameside Metropolitan Borough Council (the local authority) has referred a proposal for a variation to the admission arrangements for September 2022 for Buckton Vale Primary School (the school), to the Office of the Schools Adjudicator. The school is a community school for children aged 4 to 11 in Carrbrook, Stalybridge.
2. The proposed variation is to reduce the published admission number from 45 to 30.

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.
5. I am also satisfied that it is within my jurisdiction to consider the determined arrangements in accordance with my power under section 88I of the Act as they have come to my attention and determine whether or not they conform with the requirements relating to admissions and if not in what ways they do not so conform.

Procedure

6. In considering this matter I have had regard to all relevant legislation, and the School Admissions Code (the Code).
7. The documents I have considered in reaching my decision include:
 - a. the referral from the local authority dated 28 April 2021 supporting documents and responses to my enquiries;
 - b. the determined arrangements for 2022 and the proposed variation to those arrangements;
 - c. evidence that the governing board for the school has been consulted;
 - d. a map showing the location of the school and other relevant schools;
 - e. a copy of the notification sent to the appropriate bodies about the proposed variation; and
 - f. comments received on the proposed variation from the appropriate bodies.

Consideration of the arrangements

8. When I considered the arrangements as a whole it appeared to me that they may not meet the requirements of the Code in the following ways:
 - a) Paragraph 14 of the Code requires that admission arrangements are clear. Some of the dates and references to other documents in the arrangements were not clear to me.

- b) Paragraph 1.8 of the Code requires that oversubscription criteria are clear. The first oversubscription criterion refers to residence orders; this is an obsolete term and using it may make this criterion unclear.
- c) Paragraph 1.8 of the Code also requires that oversubscription criteria are objective and clear. The fourth criterion refers to “ease of access”; this may not be objective.
- d) Paragraph 1.8 of the Code requires there to be a tie-breaker for when two applications cannot be separated. This requirement did not appear to be met.

The proposed variation

9. 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 in certain other limited and specified circumstances. I will consider below whether the variation requested is justified by the change in circumstances.

10. Paragraph 3.6 of the Code also requires that the appropriate bodies in the relevant area are notified of a proposed variation. The local authority has provided me with a copy of its notification of the proposed variation and confirmed that it was sent to all appropriate bodies in the local authority area. 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 and that views expressed have been taken into consideration. I find that the appropriate procedures were followed.

Consideration of proposed variation

11. The school is situated in Carrbrook to the north of Stalybridge. The Department for Education Database records that there are 13 other primary schools within two miles of its postcode. The admission arrangements, including a PAN of 45, for the school were determined by the local authority on 21 January 2021. The oversubscription criteria can be summarised as:

1. Looked after and previously looked after children
2. Children with exceptional medical and social needs
3. Siblings of children already on roll
4. Straight line distance between home and school, with children living closest to the school having priority.

12. The application said that major change in circumstances making it necessary to request a variation was financial difficulty caused by the intake in September 2021 being now known as 32. The application said the proposed variation “will enable the school to manage one intake of 30 and review current staffing levels to minimise overall running costs.”

13. I asked for further details about the school’s financial situation and how reducing the PAN for 2022 would help address the reported difficulties. From the response I can see that the number on roll at the school has been falling for some years and that the school has been proactive in reducing the number of classes in order to stay within budget. The school also described additional staffing costs it had incurred as a result of the pandemic.

14. In September 2019, there were 299 children on roll organised into 11 classes, reducing to 283 on roll in September 2020 organised into 10 classes. There are expected to be 267 children on roll in September 2021 organised into nine classes. The school groups children across year groups and the planned organisation for September 2021 also groups children across key stages.

15. I have tried to understand how reducing the PAN from 45 to 30 in 2022 would allow the school to reduce further the number of classes and so reduce costs. The local authority said “In order to comply with Infant Class Size legislation, the school is required to have a teacher for every 30 Key Stage 1 pupils. Across Key Stage 1 currently, the school have 104 pupils necessitating at least four teachers with significantly less funding than 120 pupils would bring.” This is not entirely accurate; legislation requires that infant classes (which are 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 teacher. There is nothing in the legislation to prevent the fourth teacher from having older children in their class and so there would be additional funding associated with those children available. The school’s plan for September 2021 includes a class of seven and eight year-olds which would not be an infant class if there were more eight than seven year olds.

16. The school told me “over years we have needed to ensure staffing is at a high enough level to except [sic] in year transfers. With a legal PAN of 45 we must continue to take children on in year transfers into all classes.” This is not the case. The PAN is set annually for the normal year of admission, in this case Reception (Year R). It is not possible to refuse admission to Year R while the number of children in that year group is less than the PAN. For other year groups the admission authority can refuse admission if admitting the child would prejudice the efficient provision of education or the efficient use of resources. The PAN set previously when other year groups joined the school does not come into consideration, nor does a PAN set after a year group is established in the school. Schools do not have to set staffing levels to allow for children who might want a place in the future.

17. For the year beginning September 2021 the school is expected to have 267 children in nine classes. At the end of that year (and assuming no changes to Year 6 in the meantime), 45 will leave for secondary school. If I approve the reduction in the PAN to 2022 to 30 and this number of children joined the school, there would be 252 children on roll for the next school year.

Year group	R	1	2	3	4	5	6
Expected number of children in 2022 if PAN reduced	30	32	28	36	40	42	44

18. It is difficult to see how this number of children could be distributed across less than nine teaching groups, the same number as in the previous year, but with a budget based on 15 fewer children. Assuming that the number of children in what will be Year 1 and Year 2 are as expected, it would be possible to avoid grouping children across key stages; this may be considered an advantage. If either of the existing infant year groups had increased, then some Year 2 children could be placed in a Year 3 class to meet infant class size legislation.

19. If I do not approve the reduction, then up to 45 children could start school in Year R in September 2022. There would again be as many as 267 children on roll (the same as in the previous year) and these can be organised into nine classes. Every additional child above 30 would add to the school's funding at no extra staffing cost.

20. Constraining the number of children joining the school in September 2022 would appear to leave the school needing the same number of staff, but with a lower budget because of a lower number on roll. On the face of it, this does not help the school address financial pressures.

21. The local authority said it was:

“committed to consulting in the Autumn term on a reduction from 45 to 30 for September 2023. However, a reduction from September 2022 would assist the school significantly, allowing them to plan for 30 pupils across Key Stage 1 as soon as possible”.

In this context the proposal does make sense and would lead to a reduction to eight classes being possible from September 2023, earlier than might be the case without it.

22. I note that if I approve this proposal, the PAN for 2022 becomes 30 and paragraph 1.3 of the Code says that if it intends to keep the same PAN in 2023, the local authority is only required to consult the governing board of the school. Furthermore, paragraph 3.3 of the Code prohibits any objection being brought to a decision to keep the same PAN other than by the governing board. Although the local authority has said it is committed to publicly consulting on the future PAN, I am concerned that if I approve the proposal, then this would not be required and the number of places at the school could have been reduced for the longer term without public consultation or the opportunity for a parent to object.

23. I will balance these concerns with the wider view of the need for school places in the area presented to me by the local authority. There are 435 places available in Year R classes for September 2021 across 10 schools in the local authority's planning area. Of these 329 have been allocated and only two of the 10 schools were fully subscribed. Based on the recent local birth rate, the local authority is of the view that the demand for places will be stable for the next few years. The school itself had 32 first preferences expressed for 2021, all of which were met. No places were offered at the school to children whose parents would have preferred another school. The local authority appears to have a sound understanding of the demographic pattern in the area and the need to consider the possible impact on the birth rate from the pandemic when planning places.

24. From this information I conclude that if the PAN for 2022 is reduced to 30, it is likely that it will not be possible to offer places to a small number of children for whom the school was their parents' first preference. However, with the large number of places available at other nearby schools those children could be offered places at other preferred schools. If the local authority needed the places at the school in the future, as the admission authority it could admit above the PAN in any year or determine a higher PAN when needed.

25. With this background, I think it unlikely that there would be a substantial number of parents or others who would argue against proposed PAN of 30 for 2023 during any public consultation on the matter. As this is a community school, the future PAN is set by the local authority and any member of the community would be able to approach their local councillor to ensure that a future PAN is properly and publicly scrutinised.

26. While I hope that the local authority will continue with its declared intention to consult on the PAN for 2023, if it chooses not to do so then I am satisfied that in this context there are checks and balances in place to mitigate my concerns set out above.

27. I have decided that:

- a) reducing the PAN for 2022 will help the school address its financial difficulties more quickly than waiting for the PAN to be reduced in 2023;
- b) the number of school places in the area are sufficient to mean that any child who cannot be offered a place at the school in 2022 as a result of a reduced PAN will not be disadvantaged; and
- c) although my decision would effectively set the PAN beyond 2022 and allow public scrutiny of the reduction to be avoided, the local authority has committed to consult on the PAN for 2023. If it does not honour that commitment there are other ways in which the future PAN can be securitised through the local democratic process.

Therefore, I approve the proposed reduction in PAN for 2022 from 45 to 30.

Other Matters

28. Paragraph 14 of the Code requires that admission arrangements are clear. There were several ways in which I thought the arrangements may not be clear. On the first page of the arrangements parents are told that they should put their child's name down at any school by 31 October 2021. They are later told that the online application must be made by 15 January 2022. This latter is the statutory deadline for applications to primary schools (31 October 2021 being the statutory deadline for secondary schools), and it must also be possible for paper applications to be made. I considered that including another date in the arrangements may not be clear. There was also reference on the first page to "Starting Out". It is not clear from the arrangements what this is. The arrangements also said that applications should be discussed with all parents and carers of the child. It was not clear to me who this discussion is with.

29. When I raised these matters with the local authority it said that “Starting Out” was explained in the co-ordinated scheme as the composite prospectus. The co-ordinated scheme, composite prospectus and the admission arrangements are different things with different audiences and publication dates. They should all stand alone. The scheme of co-ordination must be published by 1 January each year, admission arrangements must be published by 15 March, while publication of the composite prospectus is not required until 12 September. I find that if parents must rely on other documents to understand admission arrangements, then the arrangements cannot be clear.

30. The local authority also explained that parents are asked to put their child’s name down at any school by 31 October 2021 in order to receive details of the application process. Apart from begging the question of what happens if parents do not do this, I think that some parents might interpret putting the name down by 31 October as being an application. The local authority again referred to explanations in the co-ordinated scheme and “Starting Out” and said that it had not had any issues with confusion among parents.

31. While I can understand that it would be helpful for the local authority to have details of potential applicants as early as possible, the arrangements must be clear, without reference to other documents, that registering with a school by 31 October is not a formal application and whether they have put the child’s name down or not parents must complete the common application form by 15 January.

32. The arrangements say, “Each school application should be discussed with all parents and carers of the child”. The local authority told me that this was to avoid disputes between separated parents over applications. As written, it suggests that all parents are being required to discuss applications with an unknown third party. If the intention is to say that parents must agree between themselves which schools to apply for before making an application, that is what the arrangements should say.

33. Paragraph 1.8 of the Code requires that oversubscription criteria are clear. The first oversubscription criterion referred to residence orders. Residence orders were replaced by child arrangements orders by the Children and families Act 2014. Including an obsolete term makes this criterion unclear. The local authority agreed to address this issue.

34. Paragraph 1.8 of the Code also requires that oversubscription criteria are objective and clear. The fourth criterion reads:

“Preference will be given to pupils living nearest to the school taking into account ease of access to and distance from alternative schools.

Ease of access will be considered when parents provide details of particular reasons that mean their child could reach their nearest school but will have a disproportionately long journey to another school if denied admission to their nearest school. Details must be provided in with the application.”

I asked the local authority how ease of access was assessed objectively.

35. In its response the local authority again referred to “Starting Out” and online information. My above comments about admission arrangements needing to stand alone apply. It said:

“A panel of officers from Children’s Services will meet to consider the evidence provided for each individual case. Details of the Special Circumstances Form is explained and included within Starting Out and within the online application process.

The panel would consider whether the nearest school on a direct distance measurement is a disproportionately long route compared to their nearest school using walking distance.

Requests for such instances are rare but each case would be considered on an individual basis.”

36. This is not in my view an objective process. It is also potentially unclear and unfair. Consider child A who lives closer to a school than child B. Child B claims they should have priority on the grounds of ease of access and this claim is agreed. As a result, Child B takes a place at the school instead of Child A, who did not claim ease of access but is now left with a more difficult journey than B would have had to an alternative school.

37. Reference in the response from the local authority to “nearest school on a direct distance” and “nearest school using walking distance” are also unclear. Priority is not given in the arrangements to the nearest school. Furthermore, it could be that the nearest school was a school with a religious character which was fully subscribed from members of the faith so a child living next door to the school, but not of the faith could not be offered a place. Taking proximity to such a school into account would be unfair.

38. I find that taking into account ease of access in the fourth criterion is not objective or clear and potentially unfair. This criterion, therefore, does not conform with paragraph 1.8 of the Code.

39. Paragraph 1.8 of the Code also requires there to be a tie-breaker for when two applications cannot be separated. The arrangements say:

“In the event of distances being the same for 2 or more applications where this distance would be the last place/s to be allocated, the place will be allocated to the pupil that is nearer using walking distance as measured using the local authority’s school admissions data mapping software.”

40. I asked the local authority how this would separate two children living in the same block of flats. It recognised that this was a potential issue, although it said it had never occurred, and suggested that random allocation could be used in these circumstances.

41. These arrangements, which apply to all community and voluntary controlled schools in Tameside, do not conform with the Code in the ways I have identified. Paragraph 3.3 of the Code says that admission authorities must revise their arrangements within two months of the date of a determination unless the adjudicator specifies another date. In its responses to me the local authority said it was planning a review of its arrangements to ensure that they conformed

with the new Code which is expected to come into force in September 2021. I have, therefore, decided to require the local authority to revise its arrangements to give effect to this determination by the same date.

Determination

42. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by Tameside Metropolitan Borough Council for Buckton Vale Primary School for September 2022.

43. I determine that the published admission number for 2022 will be reduced from 45 to 30.

44. 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.

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 or another date specified by the adjudicator. In this case I require the arrangements to be revised by 1 September 2021.

Dated: 27 May 2021

Signed:

Schools Adjudicator: Phil Whiffing