



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: VAR727

Admission Authority: Birmingham City Council for St Benedict's Infant School, Birmingham and for all community and voluntary controlled schools in Birmingham which admit pupils into Reception

Date of decision: 25 August 2017

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I approve the variation to the admission arrangements determined by Birmingham City Council for St Benedict's Infant School.

I determine that for admissions in September 2017 the published admission number for the school shall be 90 and in September 2018 it shall be 60.

In accordance with section 88I (5) of the School Standards and Framework Act 1998, I also find that the arrangement for all community and voluntary controlled schools in Birmingham which admit pupils into Reception fail to comply with the requirements concerning admission arrangements in the way 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. Birmingham City Council has referred a variation to the Adjudicator about the admission arrangements for St Benedict's Infant School, a community school for children aged three to seven, for September 2017 and September 2018. The

variation is a reduction to 90 from the determined published admission number (PAN) of 150 for September 2017 and to 60 from the determined PAN of 150 for September 2018.

Jurisdiction

2. 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”.

I am satisfied that the proposed variation is within my jurisdiction.

3. I am also using my power under section 88I (5) of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation, guidance and the School Admissions Code (the Code).

5. The documents I have considered in reaching my decision include:

- (i) the local authority’s email and form of referral of 28 July 2017 and subsequent correspondence;
- (ii) the determined arrangements for September 2017 and September 2018 and the proposed variation to those arrangements;
- (iii) evidence of determination of the arrangements for September 2017 and September 2018;
- (iv) a copy of the local authority’s booklet for parents seeking admission to schools in the area in September 2017;
- (v) a copy of the notification which the local authority sent to appropriate bodies about the proposed variation;
- (vi) evidence that the local authority had consulted the governing body of the school before making the variation request.

Other matters

6. When I looked at the arrangements which the local authority had determined for both September 2017 and September 2018, it appeared to me that they may fail to comply with the requirements which are set out in paragraphs 2.16 and 2.17 of the Code. Paragraph 2.16 states that:

*“Admission authorities **must** provide for the admission of all children in the September following their fourth birthday. The authority **must** make it clear in their arrangements that, where they have offered a child a place at a school:*

- a) that child is entitled to a full-time place in the September following their fourth birthday;*
- b) the child’s parents can defer the date their child is admitted to the school until later in the school year;*
- c) where the parents wish, children may attend part-time until later in the school year”*

Paragraph 2.17 states that:

“Admission authorities must make clear in their admission arrangements the process for requesting admissions out of the normal year group.”

I have explained the basis of my concerns to the local authority and sought its comments regarding them.

Consideration of Factors

7. The local authority determined the admission arrangements for the school, and for the other community and voluntary controlled schools for which it is the admission authority, on 16 February 2016 for September 2017 and on 20 February 2017 for September 2018. For both years, the school’s PAN was set at 150 for admissions in Reception (Year R). However, the local authority explained in a consultation document sent to schools in the relevant area in June 2017 that the school had been experiencing falling rolls in recent years. It said that the additional capacity of a nearby Free School which had opened in 2015 had had a direct impact on the numbers at St Benedict’s Infant School. This document stated that the current Reception year had 105 children in it, and the information provided by the request form stated that this year had started with 112 children. Year 1 had 136, having started with 127. It also explained that the current intention of the local authority was to propose that St Benedict’s should become an all through primary school in September 2018, but that it had yet to publish this proposal as required by the Act and The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013.

8. In its form setting out the requested variation, the local authority explained that the proposed variation would impact on Ark Chamberlain Primary Academy to which St Benedict's is linked. Pupils from St Benedict's feed the junior provision at Ark Chamberlain. The response to the consultation on the proposal showed no objection had been received from any school in the area. The local authority has told me that it believes that the proposal will be of assistance to other local schools which are also concerned about the impact on their intakes of the nearby Free School.

9. The local authority has provided me with evidence of its discussions with the school's governing body. This consultation is required under section 88E(4) of the Act. The school has written to me in support of the requested variation to its admission arrangements, explaining in detail the current effect on it of having in-year vacancies. It says that it necessarily admits children from all parts of the city, many of whom are recently arrived from a wide range of countries, and who often do not stay long at the school. It has cited the example of one of its Year 1 classes which had 27 children in July only 8 of whom had started the year at the school. The school believes that it needs to stabilise this extremely fluid situation in which it cannot know how many classes to plan for at the beginning of the year or how many children it may accommodate during it, by reducing its PAN. It fully supports the proposed variation.

10. In the light of what both the school and the local authority have told me is a fluid situation concerning pupil movement in the area, which is accompanied by high levels of turnover at the school, I have not sought to examine pupil projections in the locality in detail. In practice, none of the last three admission groups at the school have been filled, with the last two years having double-figure numbers of vacancies. I am also aware that the local authority has a sophisticated and robust process for forecasting the need for school places and that it is active in ensuring their provision. It has told me that it is confident that with the variation in place, demand for Reception places will be met by schools within the locality. I have asked the local authority to confirm to me the number of children who have been allocated a place at St Benedict's in Year R for September 2017. This number at 10 August 2017 was 81 and so within the proposed revised PAN for September 2017. I approve the variation of the admission arrangements for both September 2017 and September 2018 to provide that the PAN be set at 90 and 60 in these respective years.

11. Paragraph 2.16 of the Code sets out what must be made clear in admission arrangements concerning the admission of children below compulsory schools age, and paragraph 2.17 requires that there be a statement concerning the process for requesting admissions outside the normal age group. The admission arrangements determined by the authority for community and voluntary controlled primary schools for both September 2017 and for September 2018 contain no statements which meet the requirements set out in these two paragraphs of the Code.

12. When I asked the local authority for its comments on this matter, I said that I was aware that a statement which meets the requirements of paragraph 2.17 is to be

found in the authority's composite prospectus for September 2017. I also referred to a statement in a section in the prospectus headed "deferred entry" which refers to parents being able to "request" part-time admission to reception classes. Paragraph 2.16 requires admission authorities to make it clear as part of their admission arrangements that parents have the right to determine the date of admission of a child to school prior to the commencement of compulsory schooling and also whether this should be on a full-time or part-time basis. This is of course consistent with the fact that a child does not reach the age of compulsory schooling until the beginning of the term after the term in which he or she is five. An ability to make a request for the child to attend school part time does not convey the existence of this right to parents with the clarity that paragraph 2.16 requires. In any case, the determined arrangements themselves are silent in respect of the matters required to be set out there by paragraphs 2.16 and 2.17 of the Code, and so are in breach of these provisions.

13. When the local authority responded to me on this matter it accepted that statements meeting the requirements of paragraphs 2.16 and 2.17 of the Code were absent from its determined admission arrangements and said that it would now act to vary its admission arrangements for both September 2017 and for September 2018 in order to comply with these mandatory requirements of the Code. The Code requires that the local authority makes this variation. The Code provides at paragraph 3.1 that revisions to admission arrangements in order to give effect to a determination by the adjudicator must be made within two months of that determination unless an alternative timescale is specified by the adjudicator. In this case, I do not specify an alternative timescale and the variation must be made within two month of the date of this determination.

Conclusion

14. I have set out above the reasons why I approve a variation to the arrangements for the school for September 2017 and September 2018.

15. I have also explained why I am of the view that these arrangements fail to comply with what the Code requires in paragraphs 2.16 and 2.17.

Determination

16. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the variation to the admission arrangements determined by Birmingham City Council for St Benedict's Infant School.

17. I determine that for admissions in September 2017 the published admission number (PAN) for the school shall be 90 and in September 2018 the PAN shall be 60.

18. In accordance with section 88I (5) of the School Standards and Framework Act 1998, I also find that the arrangement for all community and voluntary controlled schools in Birmingham which admit pupils into Reception fail to comply with the requirements concerning admission arrangements in the way set out in this determination.

19. 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.

Date: 25 August 2017

Signed:

School Adjudicator: Dr Bryan Slater